S. HRG. 99-777

IMPLEMENTATION OF TITLE XVIII OF PUBLIC LAW 99–272, THE RECONCILIATION ACT

HEARING

BEFORE THE

COMMITTEE ON SMALL BUSINESS
UNITED STATES SENATE

NINETY-NINTH CONGRESS

SECOND SESSION

ON

IMPLEMENTATION OF TITLE XVIII OF PUBLIC LAW 99-272, THE RECONCILIATION ACT

APRIL 28, 1986

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IMPLEMENTATION OF TITLE XVIII OF PUBLIC LAW 99-272, THE RECONCILIATION ACT

MONDAY, APRIL 28, 1986

U.S. SENATE,
COMMITTEE ON SMALL BUSINESS,
Washington, DC.

The committee met, pursuant to notice, at 11:07 a.m., in room 428-A, Russell Senate Office Building, Hon. Lowell Weicker, Jr. (chairman of the committee) presiding.

STATEMENT OF HON. LOWELL WEICKER, JR., A U.S. SENATOR FROM THE STATE OF CONNECTICUT, AND CHAIRMAN, COMMITTEE ON SMALL BUSINESS

The CHAIRMAN. The committee will come to order.

Today the committee will focus on the implementation of Title XVIII of Public Law 99-272, the Omnibus Reconciliation Act. This legislation authorizes funding for the Small Business Administration through the end of the present administration.

SBA's 3-year reauthorization was the culmination of over a year's worth of work by many people on behalf of small business in America. In May 1985 the Senate Republican leadership, the White House, myself, the minority in the Senate and the majority in the House hammered out a compromise to retain an independent SBA, but at a greatly reduced level. That agreement was part of the Senate Republican leadership budget package which passed the Senate 50 to 49 and was ratified by the Senate a second time last July with the passage of S. 408, by a vote of 94 to 3. This legislation was subsequently incorporated into the reconciliation bill which was signed into law by the President on April 7, 1986.

On the books now in Public Law 99-272 is the legal blueprint for SBA for the next 3 years. It is unfortunate, though, that, despite the law, some people in this administration want to turn the clock back and start the fight all over again. Misleading and mean-spirited comments reminiscent of last year's battle are once again being directed at supporters of an independent SBA and entrepreneurship in America.

I intend to exercise the oversight authority of this committee to insure that the letter and the spirit of the law are fully complied with. I will not allow this administration to achieve administratively what it was unable to achieve legislatively. In other words, SBA is not going to be dismantled on my watch.

Even talk of elimination of SBA flies in the face of the recently enacted law and ignores the clear expression of support for an independent SBA by the small business community.

The job of the Acting Administrator of SBA is to insure that the agency is effectively run and the law fully implemented. The purpose of this hearing is to determine whether or not that is the case.

Now let me say—and I repeat again—that I am not going to see happen de facto what has not been accomplished de jure, and that in effect will be the thrust of my remarks and questions during the course of the hearing.

I ask unanimous consent that all letters, memorandum, and documents that I reference and quote during this hearing be made a part of the hearing record.

I would now turn to my colleagues for any opening statements that they might have.

Senator Dixon.

STATEMENT OF HON. ALAN J. DIXON, A U.S. SENATOR FROM THE STATE OF ILLINOIS

Senator DIXON. Thank you, Mr. Chairman.

I have an opening statement from our distinguished ranking member, Senator Dale Bumpers, of Arkansas. I ask consent of the Chair that that be placed in the record.

[The prepared statement of Senator Bumpers follows:]

Statement of Senator Dale Bumpers
Senate Small Business Committee
April 28, 1986

Mr. Chairman, I want to applaud you for convening this hearing on the Small Business Administration's implementation of the recently enacted three-year authorization bill which the President signed earlier this month. As everyone knows, this was essentially the bill which the Chairman and I wrote and which members of this Committee worked hard to enact last year. As Senators know, S. 408 passed the Senate by 94-3 on July 16, 1985. The House elected not to move a separate SBA authorization bill; instead they reported a very similar bill as part of the reconciliation process. We worked out our differences with the House last December, and the bill reduces federal spending for SBA-sponsored programs by $2.5 billion over the next three years. The President had the good judgment to sign this bill, and, frankly, I thought we could at last get back to the business of helping small business and forget all this pointless political bickering which has characterized this Committee's dealings with the Reagan Administration.

As members of the Committee know, since they were here, this Committee thoroughly examined the President's proposal--or David Stockman's proposal or whosever idea it was--to abolish SBA for three days in our 1985 hearings on S. 408. The transcript of those hearings is 720 pages long, and our Committee's report to accompany S. 408 is 68 pages long. Frankly, as far as I could

tell there was not an ounce of support in this Committee for the Administration's proposal. We voted 16-3 to favorably report S. 408. And, while three Republican members did vote against our bill as amended by the Committee, my impression was that those Senators simply wanted further cuts in the SBA, as Senator Weicker later negotiated with the Administration, rather than the total elimination of the SBA lending programs, as Mr. Stockman argued.

In any event, it should be clear to anyone who has read the newspapers for the last year that the proposal to abolish SBA is deader than a proverbial door nail. As far as I know, there is literally no legislation in the Senate which would do what the President wants. It is true that the Administration sent up a bill, but thus far not one member of the Senate has seen fit to introduce it. So I am utterly perplexed at the press reports I continue to see to the effect that Mr. Heatherly, the new Acting Administrator of SBA, who has not been nominated by the President and who until today has never appeared before this Committee, is going merrily about his way with plans to dismantle the agency. I almost feel like Rip Van Winkle--did I miss something? But on reflection, it seems to me that it is Mr. Heatherly who is Rip Van Winkle. My first question for him will be whether he has been out of the country for the last year and a half so that he missed the debate over this issue.

Assuming his answer is no, Mr. Chairman, then it seems to me that we have a potentially serious problem. It is elementary that the function of the Executive Branch is to carry out the law. The President is, of course, always free to try and persuade Congress to change the law, but it seems to me that once the case has been heard, that should be the end of it.

If the Executive Branch does not intend to carry out the letter and the spirit of the law, then serious constitutional questions arise. Moreover, I have serious worries about an individual who can take a solemn oath to uphold and defend the law if he does not mean it.

It seems to me that there is at least what lawyers call a prima facie case, based on Mr. Heatherly's public statements, that he does not intend to implement the law. The question then becomes whether he did, in fact, make such statements and whether they represent his present intentions.

Obviously, there will be a number of specific questions about actions which Mr. Heatherly has taken as Acting Administrator. So I look forward to hearing to testimony today and getting on with answers to these questions.

Senator DIXON. I have a statement of my own, Mr. Chairman, and I will accommodate the time of the committee by not reading that statement, if it may be placed in the record.

[The prepared statement of Senator Dixon follows:]

ALAN J. DIXON
ILLINOIS

United States Senate

WASHINGTON, D.C. 20510

Statement by Senator Alan J. Dixon

Senate Small Business Committee

Implementation of the Small
Business Provisions of the
Budget Reconciliation Act of 1985

April 28, 1986

Mr. Chairman, I am extremely pleased to participate in today's oversight hearing on the implementation of the small business provisions of the Budget Reconciliation Act of 1985.

The actions of Mr. Charles Heatherly over the past month have led the small business community, and those of us in Congress who are concerned about the health and welfare of our nation's small businesses, to conclude that he intends to administratively gut and effectively dismantle the agency. The dismissal of six of the ten regional SBA Administrators and the dismissal of the chairman of the SBA private sector advisory council have caused anxiety and concern. Mr. Heatherly has added fuel to the fire surrounding these actions

by stating in various media interviews and memorandums to SBA employees that it is his mission to pursue vigorously the President's budget and legislative proposals for FY 1987.

Mr. Heatherly's intent continues despite the fact that, on April 7 of this year, President Reagan signed into law the Budget Reconciliation Act of 1985. Add to this the fact that the President's FY87 budget has not been approved by the Congress, and it becomes plainly and painfully clear that Mr. Heatherly's efforts are misguided.

Mr. Heatherly claims that there is widespread misinformation about the President's proposals for the SBA. The heart of the President's proposal is the transfer of the SBA's most effective programs to the Department of Commerce and the termination of all lending programs. In 1985, during the lengthy discussions over the fate of the Small Business Administration, I stated that, in the Commerce Department, small businesses will lose constant battles when their interests conflict with big business and other interests of Commerce. I remain steadfast in this belief.

Mr. Chairman, I am very concerned about the future of our nation's small businesses and the Small Business Administration. Small businesses are the heart of the economy of my home state of Illinois, as well as the heart of the national economy. Eighty percent of new employment in

Illinois comes from small business. Ninety seven percent of Illinois business establishments have fewer than 100 employees. Small business is the key to the economic recovery in Illinois.

The Small Business Administration is an agency with an excellent record of accomplishments, particularly in terms of the number of jobs created and revenues produced. The revenues generated by the Small Business Administration far exceed the costs of the agency. Our investment dollars in the Small Business Administration pay enormous dividends.

Destroying an economically efficient agency is not an equitable solution for deficit reduction. The administration must demand comparable sacrifices from all Federal agencies and not play favorites. The administration would, if unchecked, leave defense spending at record levels. The administration has used the Federal deficit as an excuse for killing many vital social and business programs.

In 1985, we deliberated long and hard in our attempt to protect the interests of the small business community while recognizing the need for deficit reduction. The small business provisions of the Budget Reconciliation Act of 1985 are the result of these deliberations. When fully implemented, this portion of the legislation will save approximately $2.5 billion in outlays over a three year

period. That's not too shabby for lawmakers who are "singularly inept" at meeting their responsibilities, which is how Mr. Heatherly reportedly described our efforts in the Philadelphia Inquirer on April 16.

As stated earlier, Mr. Chairman, I am pleased to participate in today's hearing, and I look forward to hearing from Mr. Heatherly.

Senator DIXON. Mr. Chairman, a schedule conflict will prevent me from being here during the period when the committee receives testimony from Ms. Monika Harrison, SBA's new Associate Administrator for Procurement Assistance. Given the importance of these procurement assistance programs to so many small firms, you might want to consider deferring the testimony of Ms. Harrison to a later date. I feel confident that Senators Bumpers, Levin, Sasser, Nunn, and others, whose schedules precluded their attendance, would want to have an opportunity to focus on what SBA intends to do with these programs for the remainder of this fiscal year and carefully question the new Associate Administrator concerning the impacts of the President's proposal.

The CHAIRMAN. I've considered the situation vis-a-vis the attendance of certain Senators and your own schedule, which I might add was influenced by the schedule announced at the end of last week by the majority leader, and under those circumstances I intend to call Ms. Monika Harrison at a subsequent hearing before this committee.

Senator DIXON. I thank the chairman.

The CHAIRMAN. Are there further opening remarks?

STATEMENT OF HON. RUDY BOSCHWITZ, A U.S. SENATOR FROM THE STATE OF MINNESOTA

Senator BOSCHWITZ. Yes, Mr. Chairman. I am pleased to be here today. I want to endorse your comments that the SBA should not be undone administratively when this committee and the Congress has legislated that that should not happen.

Mr. Chairman, I say that having been on the side of those who would have moved the SBA to the Department of Commerce. Having lost that battle, I certainly am very agreeable, as I must be, with what has been legislated. It would appear—and perhaps in the testimony this morning Mr. Heatherly will dispel our doubts, but it would appear—that an effort is being made to disband the SBA unilaterally, administratively, as you point out. That should not at all be the case.

I must tell you that I voted to move the Small Business Administration to the Department of Commerce, which probably would have meant the demise of this committee, Mr. Chairman. There apparently is a rather broad interest in this hearing because here in this committee we normally don't see these TV cameras. Apparently there is an interest that goes beyond this committee room in the subject that you and I are alluding to.

I might say that I sit immediately to your right, Mr. Chairman, and this is the only committee that, in the event that you retire or——[Laughter.]

Where I would rise to fame and fortune as chairman of a committee unless I have a very active truck that hits a lot of folks. [Laughter.]

I'm having that fully in mind; nevertheless, I voted as I voted, and I have a pretty good understanding of the Small Business Committee inasmuch as people with whom I've been associated in the past and still do business in my company today have been the beneficiaries of the SBA.

Having said all that, I, nevertheless, voted to move it, as I said.

I received a letter from Mr. Heatherly, about which I will question him, about the sale, for instance, of the portfolio, the existing loan portfolio. I remember very well the statements and testimony of Dave Stockman when he was here talking about the sale of this portfolio, and we went around and around about what the interest rates were in some of that portfolio, what the salability of it was, what percentage on the dollar would have to be obtained, and decided at that time that the portfolio was better collected than sold.

So it is not clear to me, as it is not clear to you, Mr. Chairman, apparently what the intent of the executive is at the present time, but perhaps we should remind them in a forceful way that the will of the Congress in this matter really does have to prevail.

The CHAIRMAN. Thank you very much, Senator Boschwitz.

Senator Gorton.

STATEMENT OF HON. SLADE GORTON, A U.S. SENATOR FROM THE STATE OF WASHINGTON

Senator GORTON. Mr. Chairman, I had the honor and pleasure of serving with you late last fall on the subcommittee on the reconciliation conference which restructured the SBA in the way in which it finds itself at the present time.

The Small Business Administration has been reauthorized now for roughly 3 years. The administration has, of course, recommended once again its abolition and the transfer of some of its remaining functions into the Department of Commerce. Mr. Chairman, I believe you are correct when you say that it is highly unlikely that Congress is going to accept that set of recommendations.

It's primarily for that reason that I am disturbed by some of the actions of the Acting Administrator. As I understand it, he sent a memorandum on April 2, outlining what he considers the responsibilities of his job, and it had three parts: First, to administer the agency's mandated programs with integrity and efficiency, assuring that all of the agency's obligations are met in a timely and professional manner; next, to be the chief spokesman and advocate for the President's legislative proposals before Congress and the public so that progress can be made in bringing about needed changes in mission structure and operations; and the third task he outlined for himself is to prepare the agency for an orderly transition to a new configuration at the Department of Commerce once the transfer of functions has been enacted into law.

Mr. Chairman, I can't quarrel with that vision of the responsibilities of an Administrator who has been duly confirmed by the Senate. Mr. Heatherly has not been. Indeed, he has not been nominated to be Administrator of the agency and has not, therefore, had his name submitted to the Senate.

But I must point out, though I will be happy to hear Mr. Heatherly's comments on this subject, that those three views of his position are not entirely consistent with one another.

Of course it's appropriate for him to defend the recommendations of the administration in connection with SBA, and of course if, in fact, it is going to be wound down, to do so efficiently is an important function. Neither of these objectives in my view, Mr. Chair-

man, however, ranks with doing the job that he was appointed to do and following the law as it exists at the present time. That, it seems to me, is the primary goal of the person who is running that agency.

The law is a relatively new one. There is very little chance that the recommendations of the administration are, in fact, going to be adopted by the Congress. Unless and until they are, while it is certainly appropriate for the Acting Administrator to voice the views of the administration and to make recommendations to this committee and the Congress, his primary duty, it seems to me quite clearly, Mr. Chairman, is to run the agency as efficiently and as well as he can. The destruction of SBA's mission and the humiliation and destruction of the morale of its employees are not a part of his charge.

The CHAIRMAN. Thank you very much, Senator Gorton.

Senator Nickles.

STATEMENT OF HON. DON NICKLES, A U.S. SENATOR FROM THE STATE OF OKLAHOMA

Senator NICKLES. Mr. Chairman, first, thank you for having this meeting. I look forward to seeing what our witnesses have to say.

Just a general comment, I happen to be a small businessman and made a living operating a couple of small businesses before I came to the Senate. The Small Business Administration, in my opinion, helped a very small percentage of the small businesses out there.

I was interested to see what changes could be made in the SBA. I complimented you last year for the changes that were made legislatively. I thought they were positive changes. Senator Dixon worked on those as well as Senators Boschwitz, Gorton, and others. I think they made some positive suggestions to save some money, which I think is important, and I think some money can be saved in the Small Business Administration and also make the Administration, SBA, more responsive to small businesses on a broader scale, not just on those few businesses that learn the procedures of how to make certain applications.

Whether those changes are far enough—and Mr. Heatherly may comment on that today—if additional changes need to be made, I'm certainly responsive to hearing those, but I also think it's incumbent on whoever the Administrator or Acting Administrator is to carry out the legislative responsibilities as now provided in the statute.

The CHAIRMAN. Thank you very much, Senator Nickles.

The first witness—I beg your pardon, Senator Kerry.

STATEMENT OF HON. JOHN KERRY, A U.S. SENATOR FROM THE STATE OF MASSACHUSETTS

Senator KERRY. Thank you. I don't have an opening statement except to say that I appreciate your having these hearings, Mr. Chairman, and I share with you the dismay which I think you've expressed about the context in which we are having this hearing. I think it is unfortunate that there is yet another round of an ideological attack on not only the agency, but on a process which we worked hard to put into place last year and which many of us had

anticipated not only set in place significant savings which were important, but at the same time perhaps streamlined and improved the process, and I think established a relationship which the Congress has a right and continues to have a right to expect would be fulfilled.

I am anxious to listen to your testimony and to perhaps explore that relationship a little bit, see where we're going.

If I may at this time, Mr. Chairman, simply ask that the record remain open with respect to this hearing and submit some questions on behalf of our colleague, Senator Boren from Oklahoma, who can't be here right now, I would like to do that. I ask that they be responded to.

The CHAIRMAN. So ordered.

We also have a statement from Senator D'Amato.

[The prepared statement of Senator D'Amato follows:]

STATEMENT BY SENATOR ALFONSE D'AMATO
COMMITTEE ON SMALL BUSINESS
APRIL 28, 1986 11AM SR - 428A

MR. CHAIRMAN, I COMMEND YOU FOR HOLDING THIS VERY TIMELY AND IMPORTANT HEARING TODAY TO DISCUSS THE FUTURE OF THE SMALL BUSINESS ADMINISTRATION (SBA). I AM ANXIOUSLY LOOKING FORWARD TO HEARING FROM THE ACTING ADMINISTRATOR OF THE SBA, MR. CHARLES HEATHERLY, ABOUT HIS CURRENT PLANS FOR SBA AND ITS PROGRAMS. I AM EXTREMELY TROUBLED BY PRESS REPORTS OF HIS RECENT ACTIONS AT SBA AND HIS INTENT TO CONTINUE ALONG THE SAME COURSE IN THE FUTURE.

THE SMALL BUSINESS ADMINISTRATION PLAYS A VITAL ROLE IN ADDRESSING THE UNIQUE NEEDS AND CONCERNS OF THE SMALL BUSINESSMAN. THE SBA NOT ONLY PROVIDES OPERATING LOANS AND MANAGEMENT ASSISTANCE, BUT ALSO PROVIDES THE NECESSARY COUNSEL AND ASSISTANCE TO MILLIONS OF ENTREPRENAURS THROUGHOUT THE UNITED STATES.

MORE THAN 90% OF BUSINESS ENTERPRISES ARE SMALL BUSINESSES. THE UNIQUE CHARACTERISTICS OF SMALL BUSINESS MAKES THE SBA A FORCEFUL AND IMPORTANT AGENCY OF THE

FEDERAL GOVERNEMENT. CONGRESS AND THE PRESIDENT HAVE RECOGNIZED THE SBA's SPECIAL FUNCTION BY REAUTHORIZING THE SBA THROUGH FISCAL YEAR 1988.

MR. CHAIRMAN, I WAS APPALLED TO LEARN THAT THE ACTING SBA ADMINISTRATOR, MR. HEATHERLY, ABRUPTLY FIRED SIX REGIONAL ADMINISTRATORS HIS VERY FIRST DAY ON THE JOB. THEIR DISMISSAL WAS BASED NOT UPON POOR JOB PERFORMANCE, BUT RATHER ON THE FACT THAT THEY ARE PROPONENTS AND ADVOCATES OF THE SBA.

IS IT SO SUPRISING THAT THEY SUPPORTED THE AGENCY THEY SERVED? AGAINST CONGRESSIONAL MANDATE AND THE LETTER OF THE LAW, MR. HEATHERLY HAS TAKEN IT UPON HIMSELF TO SINGLE-HANDEDLY DISMANTLE THE SMALL BUSINESS ADMINISTRATION. I FIND IT DISHEARTERING, MR. CHAIRMAN, TO BELIEVE THAT MR. HEATHERLY IS UNDOING THE RESULT OF YOUR TIRELESS EFFORTS IN MAINTAINING THE SBA AS AN INDEPENDENT AGENCY.

MR. CHAIRMAN, I COMMEND YOU FOR YOUR EFFORTS AND I WANT YOU TO KNOW THAT THIS SENATOR FULLY SUPPORTS YOU AND THE SMALL BUSINESS ADMINISTRATION.

THANK YOU, MR. CHAIRMAN.

The CHAIRMAN. The first witness is Charles Heatherly, the Acting Administrator of the Small Business Administration.

Your statement in its entirety will be printed in the record following your oral presentation. Please proceed in any way that you deem fit.

STATEMENT OF HON. CHARLES L. HEATHERLY, ACTING ADMINISTRATOR, U.S. SMALL BUSINESS ADMINISTRATION

Mr. HEATHERLY. Thank you, Mr. Chairman.

I do have a brief opening statement that I would like to make before taking your questions.

I am pleased to be here today as the Deputy Administrator and Acting Administrator of the SBA. I would like to thank you for this opportunity to clear up some misconceptions and some misinformation that I think have been pervasive. I do welcome this opportunity to make this statement.

It is usually the case when a change occurs at an agency that there is some flurry of media coverage coupled with some statements by the interest groups that follow this agency, and sometimes this creates some confusion and misconceptions about what is going on.

Regrettably, perhaps some of my statements made in a facetious or lighthearted manner to media were then reported and taken at face value. Those of you who have been in politics a long time get used to this; for me, it is a new experience.

There can be no doubt, Mr. Chairman and members of this committee, about your commitment to insuring the vitality of the small business community and the maintenance of a strong voice for small business in the executive branch.

I believe you understand, as I do, that small business is the engine which drives our economy, and we both understand the value and benefits of a strong small business sector in the success and future and well-being of our country.

I want to pledge to you, Mr. Chairman, my cooperation and that of my staff to keep you and the members of this committee informed on the Small Business Administration's activities, for which you have the responsibility of oversight.

To start this process, Mr. Chairman, I want to take a moment to clarify for the record some misconceptions about recent events at SBA.

I have not been asked by the President to shut down the SBA or to dismantle it. My responsibility is to support the President and his proposals and to operate the agency adhering to existing laws and regulations including title XVIII of Public Law 99-272, the Consolidated Omnibus Budget Reconciliation Act. I intend to work diligently to insure that all such laws and regulations are fully implemented.

As to the current budget process in which this body is engaged, I am sure we both agree that the deficit is a critical problem which must be addressed by both the legislative and the executive branches.

In responding to your request to inform this committee of the steps we have taken or intend to take to insure implementation of

title XVIII, I hereby submit for your consideration an outline of how we intend to follow through on this implementation section by section. Having said that and submitted this statement for the record, I am pleased to answer any questions you may have.

[The prepared statement of Mr. Heatherly follows:]

SBA
U.S. Small Business Administration
Washington, DC 20416

STATEMENT OF
CHARLES L. HEATHERLY
ACTING ADMINISTRATOR
U.S. SMALL BUSINESS ADMINISTRATION
BEFORE THE
COMMITTEE ON SMALL BUSINESS
UNITED STATES SENATE

APRIL 28, 1986

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE:

I AM PLEASED TO APPEAR BEFORE YOU TODAY AS THE ACTING ADMINISTRATOR OF THE SMALL BUSINESS ADMINISTRATION. BEFORE I BEGIN MY STATEMENT I WOULD LIKE TO THANK YOU FOR THE OPPORTUNITY TO SHARE WITH YOU OUR PLAN TO STRENGTHEN THE SMALL BUSINESS SECTOR OF OUR ECONOMY AND THE COMPETITIVE FREE ENTERPRISE.

IT IS MY HOPE AND INTENTION THAT WE HAVE AN OPEN, FRANK AND STRAIGHTFORWARD RELATIONSHIP IN THE MONTHS TO COME. I HAVE INSTRUCTED MY STAFF TO BE AS COOPERATIVE AS POSSIBLE WITH YOU, OTHER MEMBERS OF THE COMMITTEE AND YOUR STAFF. I AM CONFIDENT THAT ALTHOUGH WE MAY NOT ALWAYS AGREE, WE CAN THROUGH THIS PROCESS KEEP YOU INFORMED ON SMALL BUSINESS ADMINISTRATION ACTIVITIES FOR WHICH YOU HAVE THE RESPONSIBILITY FOR OVERSIGHT.

AT THIS TIME, I AM PLEASED TO RESPOND TO YOUR REQUEST IN THE LETTER OF INVITATION THAT WE INFORM YOU OF THE STEPS WE HAVE TAKEN OR INTEND TO TAKE TO ENSURE THAT IMPLEMENTATION OF TITLE XVIII OF PUBLIC LAW 99-272, THE CONSOLIDATED OMNIBUS RECONCILIATION ACT, WILL BE FULLY IMPLEMENTED.

IN RESPONDING TO YOUR REQUEST, MY TESTIMONY WILL FOLLOW THE PROVISIONS UNDER TITLE XVIII -- SMALL BUSINESS PROGRAMS. UPON COMPLETING MY STATEMENT I WILL BE PLEASED TO ANSWER YOUR QUESTIONS. AND WHENEVER I COME BEFORE THIS COMMITTEE, MR. CHAIRMAN, I CAN ASSURE YOU THAT I WILL ALWAYS MAKE EVERY EFFORT TO PROVIDE YOU AND THE OTHER MEMBERS WITH THE MOST COMPLETE, ACCURATE INFORMATION.

IN RESPONDING TO YOUR REQUEST MY TESTIMONY WILL FOLLOW THE PROVISIONS UNDER TITLE XVIII - SMALL BUSINESS PROGRAMS.

SECTION 18001 - PROGRAM AND AUTHORIZATION LEVELS

THIS SECTION COVERS PROGRAM AND AUTHORIZATION LEVELS. SINCE THEY ARE SELF-EXPLANATORY I FEEL THAT THERE IS NO NEED TO COMMENT TODAY. THE EXISTING LEVELS HAVE BEEN ADJUSTED ACCORDINGLY.

SECTION 18002 - TECHNICAL AND CLERICAL AMENDMENTS

IT IS NOT NECESSARY TO GO INTO THIS SECTION AS IT PERTAINS ONLY TO TECHNICAL CHANGES.

SECTION 18003 - DETERMINATION OF LABOR SURPLUS AREAS

THE BASIC RESPONSIBILITY FOR COORDINATING THE LABOR SURPLUS PROGRAM RESTS WITH GSA, AND THE RESPONSIBILITY FOR DETERMINING LABOR SURPLUS AREAS RESTS WITH THE DEPARTMENT OF LABOR. AS A RESULT, SBA HAS NO SIGNIFICANT OBLIGATIONS IN THIS AREA, OR CONCERN WITH THE LANGUAGE IN THE RECONCILIATION BILL. ESSENTIALLY, WE DEFER TO BOTH GSA AND THE DEPARTMENT OF LABOR ON THIS MATTER.

SECTION 18004 - FEDERAL FINANCING BANK PURCHASE OF GUARANTEED OBLIGATIONS

THIS SECTION CREATES A NEW SECTION 320 OF THE SMALL BUSINESS INVESTMENT ACT OF 1958. THIS NEW SECTION 320 PROHIBITS THE FEDERAL FINANCING BANK (FFB) FROM ACQUIRING ANY SBA GUARANTEED SBIC DEBENTURES AFTER APRIL 7, 1986, THE EFFECTIVE DATE OF THE FISCAL YEAR 1986 RECONCILIATION ACT.

DUE TO THE REMOVAL OF THIS AUTHORITY WHICH HAD BEEN USED FOR TWELVE YEARS AS THE SOLE SOURCE OF SBIC FINANCING, IT IS NOW NECESSARY FOR SBICs TO BE FINANCED IN THE PRIVATE MARKET PLACE WITH SBA's GUARANTY.

STEPS TAKEN TO IMPLEMENT THE PROVISION

THIS PROVISION IS SELF IMPLEMENTING SINCE RATHER THAN REQUIRING OR AUTHORIZING SOMETHING BE DONE, IT REMOVES AUTHORIZATION TO FUND SBIC DEBENTURES THROUGH THE FFB BUT LEAVES ALL OTHER AUTHORITY FOR FUNDING SBICs INTACT.

REMAINING UNRESOLVED ISSUES

PURSUANT TO 13 CFR SECTION 107.201(B), SBA WILL COOPERATE WITH SBICs IN FINDING FINANCING SOURCES IN THE PRIVATE MARKET PLACE TO REPLACE THE FFB. THIS WILL NECESSITATE CHANGES IN DOCUMENTATION, AND IN THE TERMS, CONDITIONS, METHOD, TIMING, AND PRICING OF THE TRANSACTIONS. WE ARE PRESENTLY DETERMINING WHETHER APPROVAL OF THESE TRANSACTIONS BY THE SECRETARY OF THE TREASURY WILL BE REQUIRED.

A PROCEDURE FOR FUNDING SBICs THROUGH INDIVIDUAL DEBENTURE SALES WILL BE IMPLEMENTED AS QUICKLY AS POSSIBLE.

SECTION 18005 - ISSUANCE AND GUARANTEE OF TRUST CERTIFICATES

THIS SECTION CREATES SECTION 321 OF THE SMALL BUSINESS INVESTMENT ACT OF 1958. THIS NEW SECTION 321 AUTHORIZES BUT DOES NOT REQUIRE, SBA TO ISSUE TRUST CERTIFICATES REPRESENTING OWNERSHIP IN WHOLE OR IN PART OF POOLS OR AGGREGRATIONS IN TRUST OF SBA GUARANTEED SBIC DEBENTURES. SBA IS AUTHORIZED ON APPROPRIATE TERMS AND CONDITIONS TO GUARANTEE THE TIMELY PAYMENT OF THE PRINCIPAL AND INTEREST ON THESE TRUST CERTIFICATES.

SECTION 321 DOES ESTABLISH THAT IN USING THIS NEW AUTHORITY SBA

-- MUST PROVIDE FOR A CENTRAL REGISTRATION OF ALL THE TRUST CERTIFICATES SOLD PURSUANT TO ITS AUTHORITY;

-- MUST CONTRACT WITH AN AGENT FOR THE CENTRAL REGISTRATION FUNCTIONS;

-- MUST REQUIRE DISCLOSURE TO PURCHASERS ON THE TERMS, CONDITIONS, AND YIELD ON TRUST CERTIFICATES;

-- HAS AUTHORITY TO REGULATE BROKERS AND DEALERS IN TRUST CERTIFICATES; AND

-- MUST, WITHIN SIXTY (60) DAYS OF THE ENACTMENT OF THE ACT, PROMULGATE RULES AND REGULATIONS FOR IMPLEMENTING THE CENTRAL REGISTRATION FUNCTION, AND CONTRACT FOR SUCH SERVICES.

STEPS TAKEN TO IMPLEMENT THE PROVISION

MEETING WITH INDUSTRY REPRESENTATIVES

ON MARCH 26, 1986, IN ANTICIPATION OF THE ENACTMENT OF THE ACT, SBA HELD A MEETING WITH REPRESENTATIVES OF THE SBIC INDUSTRY (NASBIC) CONCERNING A PLAN FOR IMPLEMENTING THE THEN EXPECTED PROVISIONS OF THE ACT. AT THAT MEETING SBA OFFICIALS SAID THEY WOULD SEEK LEGAL OPINIONS AND ADMINISTRATION POLICY GUIDANCE.

LEGAL OPINION REQUESTED AND GIVEN

ON APRIL 3, 1986, THE AA/F&I FORMALLY REQUESTED THE LEGAL OPINION REFERRED TO ABOVE FROM SBA'S GENERAL COUNSEL. THAT OPINION WAS ISSUED APRIL 10, 1986, AND ADDRESSED AMONG OTHER THINGS SBA'S AUTHORITIES, WHAT IT IS REQUIRED TO DO AND WHEN, AND THE PROHIBITIONS INCLUDED IN THE ACT.

POLICY DEVELOPMENT

SBA PLANS TO PROCEED WITH THE PRIVATE PLACEMENT TECHNIQUE PURSUANT TO PRESENT REGULATIONS TO REPLACE THE FFB FINANCING IN THE NEAR FUTURE. FURTHER, SBA WILL PROCEED TO PUBLISH IMPLEMENTING REGULATIONS AS REQUIRED UNDER SECTION 18005. A FINAL DECISION AS TO IMPLEMENTATION HAS NOT YET BEEN MADE, PENDING FURTHER ANALYSIS OF THE DESIRABILITY OF THIS APPROACH IN CONSULTATION WITH OTHER GOVERNMENT AHENCIES.

REMAINING UNRESOLVED ISSUES

SALE OF TRUST CERTIFICATES

THE SBA WAS GIVEN NO AUTHORITY TO SELL THE TRUST CERTIFICATES AND THEREFORE IT WILL BE NECESSARY FOR THE SBICs INDIVIDUALLY,

IN GROUPS, OR THROUGH A SELLING ENTITY OR AGENT TO ARRANGE FOR THE SALE OF THE CERTIFICATES.

STRUCTURE OF THE FINANCINGS

THE EXACT STRUCTURE OF THE FINANCING MECHANISM CANNOT AS YET BE DEFINED IN THE ABSENCE OF A SELLING ENTITY OR AGENT AS DISCUSSED ABOVE. THE REPRESENTATIVES OF THE SBIC INDUSTRY HAVE INDICATED THAT THEY WILL TAKE STEPS TO FORM A SELLING ENTITY AND EMPLOY A SELLING AGENT.

TREASURY CLEARANCE AND APPROVAL

WHILE THE FFB IS PROHIBITED FROM PURCHASING SBA-GUARANTEED SBIC DEBENTURES BY THE NEW SECTION 320, THE FEDERAL FINANCING BANK ACT STILL MAY REQUIRE PRIOR APPROVAL BY THE SECRETARY OF THE TREASURY ON THE METHOD, SOURCE, TIMING, AND FINANCING TERMS AND CONDITIONS (INCLUDING RATES OF INTEREST AND MATURITIES) OF ANY SALES UNDER SECTION 321.

SECTION 18006 - TERMINATION OF AUTHORITY TO MAKE CERTAIN DISASTER ASSISTANCE LOANS

THIS SECTION REPEALED THE TWO NON-PHYSICAL ECONOMIC INJURY DISASTER LOAN PROGRAMS CONTAINED IN SECTION 7(B)(3) - FEDERAL ACTION ECONOMIC INJURY - AND 7(B)(4) - CURRENCY DEVALUATION ECONOMIC INJURY - OF THE SMALL BUSINESS ACT. THE REPEAL IS EFFECTIVE FOR ALL DISASTERS DECLARED ON OR AFTER OCTOBER 1, 1985.

DISASTER AREA OFFICES WERE INFORMED OF THIS CHANGE IN SBA NOTICE 5000-129 (SEE ATTACHMENT #1). IN FACT, THERE WERE NO DECLARATIONS ISSUED UNDER EITHER OF THESE SECTIONS ON OR AFTER OCTOBER 1, 1985.

THIS SECTION ALSO MADE "AGRICULTURAL ENTERPRISES," AS DEFINED IN SECTION 18(B)(1) OF THE SMALL BUSINESS ACT, INELIGIBLE FOR DISASTER LOANS. THE CHANGE IS EFFECTIVE FOR ALL DISASTERS DECLARED ON OR AFTER OCTOBER 1, 1985.

DISASTER AREA OFFICES WERE INFORMED OF THE CHANGE AND INSTRUCTED TO IMPLEMENT IT BY TELEPHONE ON APRIL 8, 1986.

WRITTEN INSTRUCTIONS ARE CONTAINED IN SBA NOTICE 5000-129. BY LETTER DATED APRIL 9, 1986, THE ADMINISTRATOR OF THE FARMERS HOME ADMINISTRATION WAS NOTIFIED OF THE CHANGE AND HE WAS REQUESTED TO INFORM HIS APPROPRIATE FIELD STAFF (SEE ATTACHMENT #2). ALSO, BY LETTER DATED APRIL 9, 1986, EACH SENATOR AND CONGRESSMAN WAS INFORMED OF THE CHANGE (SEE ATTACHMENT # 3).

AS OF COB APRIL 7, 1986, DISASTER LENDING AUTHORITY CEASED FOR ALL APPLICATIONS FILED FOR AGRICULTURAL ENTERPRISES THAT HAD NOT YET BEEN APPROVED. WE HAVE IDENTIFIED SIX CASES IN THAT CATEGORY, TWO IN CALIFORNIA AND ONE EACH IN NORTH DAKOTA, LOUISIANA, VIRGINIA AND NEW JERSEY. THESE FILINGS HAVE BEEN RETURNED TO THE APPLICANTS WITH AN EXPLANATION.

SECTION 18007 - GUARANTEE FEE

EFFECTIVE APRIL 8, SECTION 18007 INCREASED SBA LOAN GUARANTY FEES EFFECTIVE APRIL 8TH, FROM ONE PERCENT TO TWO PERCENT OF THE GUARANTEED PORTION, EXCEPT FOR 502 LOAN FEES WHICH CONTINUE AT THE PRESENT ONE PERCENT. (NOTICES TO THE FIELD ARE ATTACHMENT #4). AN AMENDMENT TO SBA REGULATIONS HAS BEEN DRAFTED.

SECTION 18008 - PILOT PROGRAM INVOLVING SALE OF DEVELOPMENT COMPANY DEBENTURES

SECTION 18008 ADDS SECTION 504 TO THE SMALL BUSINESS INVESTMENT ACT (SBI ACT) WHICH REQUIRES SBA TO CONDUCT A PILOT PROGRAM OF SELLING DEBENTURES GUARANTEED PURSUANT TO SECTION 503 OF THE SBI ACT TO INVESTORS, EITHER PUBLICLY OR BY PRIVATE PLACEMENT. SBA IS ALSO AUTHORIZED, BUT NOT REQUIRED, UNDER A NEW SECTION 505 OF THE ACT TO ISSUE TRUST CERTIFICATES REPRESENTING OWNERSHIP OF ALL OR A FRACTIONAL PART OF POOLS COMPRISED OF GUARANTEED DEBENTURES ISSUED BY DEVELOPMENT COMPANIES.

THE ACT REQUIRES SBA TO: (1) PUBLISH FINAL REGULATIONS BY JUNE 6 TO IMPLEMENT SECTIONS 504 AND 505 OF THE SBI ACT; (2) CONTRACT WITH ANY AGENT BY JUNE 6 TO CARRY OUT THE FUNCTIONS PROVIDED FOR IN SUBSECTION 505(F)(2), WHICH INVOLVE THE ISSUANCE AND CENTRAL REGISTRATION OF CERTIFICATES; AND (3) REPORT TO THE PRESIDENT AND CONGRESS BY OCTOBER 1, 1986 AND 1987 ON THE PROGRESS OF THE PILOT.

62-302 0 - 86 - 2

STEPS TAKEN TO IMPLEMENT THE PILOT

TO ACHIEVE THE REQUIREMENTS OF THE PILOT WITHIN THE TIME LIMITS ESTABLISHED, WE HAVE:

- MET WITH INDUSTRY REPRESENTATIVES AND DISCUSSED ALTERNATIVE APPROACHES TO IMPLEMENTING THE PILOT.
- HELD INTERNAL AGENCY MEETINGS AND FORMULATED AN APPROACH TO THE PILOT.
- BEGAN DRAFTING REGULATORY PROVISIONS.

SECTION 505

A FINAL DECISION AS TO IMPLEMENTATION OF THE SECTION 505 POOLING PROVISIONS HAS NOT YET BEEN MADE, PENDING FURTHER ANALYSIS OF THIS FINANCING TECHNIQUE AND CONSULTATION WITH OTHER GOVERNMENT AGENCIES.

SECTION 18009 - MISREPRESENTATION AS A SMALL BUSINESS OR MINORITY CONCERN

WE INTEND TO PUBLISH DIRECTIVES ADVISING SBA PERSONNEL AS TO THE STATUTE AND PROVIDE PROCEDURES FOR IMPLEMENTING THE PROVISIONS OF THE STATUTE.

IN ADDITION, WE WILL INCORPORATE THE PENALTY PROVISIONS IN OUR FORMS AND DOCUMENTS.

SECTION 18010 - REPORT CONCERNING ALTERNATIVE SOURCES FOR LOAN GUARANTEES

AND

SECTION 18011 - USER FEES

TWO SECTIONS OF THE BILL DEAL WITH REPORTS THAT SBA IS TO PROVIDE CONGRESS BY PRESCRIBED DEADLINES.

- SECTION 18010 REQUIRES A REPORT TO CONGRESS NO LATER THAN JUNE 30 OF THIS YEAR ON ALTERNATIVE SOURCES FOR LOAN GUARANTEES.

- SECTION 18011 REQUIRES A REPORT ON USER FEES BY SEPTEMBER 30.

THESE DEADLINES WILL BE COMPLIED WITH.

SECTION 18012 - UTILIZATION OF PROGRAM AUTHORITY

SECTION 18012 REQUIRES SBA TO MAKE COMMITMENTS FOR LOANS, RENTALS, SURETY BOND GUARANTEES, THE PURCHASE OF DEBENTURES AND PREFERRED SECURITIES IN THE FULL AMOUNTS PROVIDED BY LAW, SUBJECT ONLY TO THE AVAILABILITY OF QUALIFIED APPLICATIONS AND LIMITATIONS CONTAINED IN APPROPRIATIONS ACTS. SBA WILL ADHERE TO THE REQUIREMENTS.

SECTION 18013 - BUSINESS LENDING REFORMS

SECTION 18013 LIMITS SBA'S GUARANTY TO A MAXIMUM OF 85 PERCENT FOR BORROWERS WITH LOANS IN EXCESS OF $155,000. THESE CHANGES WERE COMMUNICATED TO ALL FIELD OFFICES BY SBA NOTICE ON 3/28/86

AS POSSIBLE UPCOMING PROGRAM CHANGES. NOTICES OF 4/8/86 AND 4/9/86 ADVISED THAT THESE CHANGES BECAME EFFECTIVE ON 4/8/86 (COPIES ATTACHED). APPROPRIATE SOP AND REGULATION CHANGES ARE BEING MADE.

SECTION 18014 - SURETY GUARANTEES

SECTION 411 OF THE SMALL BUSINESS INVESTMENT ACT OF 1958 AUTHORIZES THE ADMINISTRATION TO GUARANTEE A SURETY AGAINST LOSS AS THE RESULT OF A BREACH OF THE TERMS OF A BID BOND, PAYMENT BOND, PERFORMANCE BOND OR BONDS ANCILLARY OR COTERMINOUS THEREWITH, BY A PRINCIPAL ON ANY CONTRACT UP TO A DOLLAR LIMIT. THAT LIMIT, WHICH HAD BEEN SET AT $1,000,000 SINCE 1974, IS INCREASED BY THIS SECTION OF THE NEW LAW TO $1,250,000. OTHER PROVISIONS OF SECTION 411, RELATING TO TERMS OF A GUARANTEE AND ELIGIBILITY OF A CONTRACTOR, REMAIN UNCHANGED.

STEPS TAKEN TO IMPLEMENT THE PROVISION

A NOTICE HAS BEEN SENT TO ALL SBA PERSONNEL ADVISING THEM OF THIS CHANGE, A COPY OF WHICH IS ALSO BEING SENT TO PARTICIPATING SURETIES.

REMAINING ISSUES

CONFORMING REVISIONS WILL HAVE TO BE MADE TO CHAPTER 1 OF TITLE 13 OF THE CODE OF FEDERAL REGISTER, AND THIS WILL BE DONE AS SOON AS PRACTICABLE.

SECTION 18015 - ELIGIBILITY OF SMALL BUSINESS OWNED BY INDIAN TRIBES

THIS SECTION SPECIFICALLY APPLIES TO THE ELIGIBILITY OF SMALL BUSINESSES OWNED BY INDIAN TRIBES AND ALASKAN NATIVE VILLAGE OR REGIONAL CORPORATIONS. OUR OFFICE OF GENERAL COUNSEL IS PRESENTLY DRAFTING REGULATIONS THAT WOULD IMPLEMENT THE LAW.

THESE REGULATIONS WILL OUTLINE PROCEDURES FOR HANDLING APPLICATIONS FROM SMALL BUSINESSES OWNED BY INDIAN TRIBES INCLUDING ALASKAN NATIVE VILLAGE OR REGIONAL OR VILLAGE CORPORATIONS.

ESSENTIALLY, THOSE PROCEDURES WOULD ALLOW ECONOMICALLY DISADVANTAGED INDIAN TRIBES TO OWN MORE THAN 51% OF THE STOCK OR OTHER LEGAL INDICIA OF OWNERSHIP IN AN APPLICANT 8(A) CONCERN. THIS IS IN CONTRAST TO GENERAL 8(A) PROGRAM CRITERIA WHICH PROVIDE THAT ONLY INDIVIDUALS ARE ELIGIBLE TO OWN AT LEAST 51% OF THE STOCK OR OTHER OWNERSHIP INTEREST IN AN APPLICANT CONCERN. THE PROCEDURES WILL ALSO PRESCRIBE THAT CONTROL OF THE BUSINESSES DAY-TO-DAY ACTIVITY BY MEMBERS OF AN ECONOMICALLY DISADVANTAGED TRIBE WILL BE CONSIDERED TO SATISFY THE CONTROL REQUIREMENTS OF SECTION 8(A). FINALLY, THE REGULATIONS WILL PROVIDE A MEANS FOR DETERMINING IF A TRIBE IS ECONOMICALLY DISADVANTAGED.

SECTION 18016 - SIZE STANDARD FOR AGRICULTURAL ENTERPRISES

UNDER THIS PROVISION THE SBA SIZE STANDARD FOR AN AGRICULTURAL ENTERPRISE (SIC CODES 0111-0191 AND 0212-0291) WOULD BE

INCREASED. AN AGRICULTURAL ENTERPRISE WOULD BE A SMALL BUSINESS CONCERN IF IT (INCLUDING AFFILIATES) HAS ANNUAL RECEIPTS NOT IN EXCESS OF $500,000. (PLEASE SEE ATTACHED NOTICES).

SECTION 18017 - ENCOURAGEMENT OF VETERANS BUSINESS RESOURCE COUNCILS

THE CONGRESS HAS URGED THE SBA TO EVALUATE THE EFFECTIVENESS OF THE VETERANS BUSINESS RESOURCE COUNCILS (VBRCs) WHICH ARE CURRENTLY OPERATING AND TO RECOMMEND IMPROVEMENTS IN THEIR OPERATIONS.

THE STUDY RECOMMENDED BY THE CONGRESS IS BEING PERFORMED BY SBA. OUR STAFF HAS VISITED SEVERAL OF THE ELEVEN EXISTING VBRCs IN PERSON, AND WE MAILED QUESTIONNAIRES TO ALL VBRC CHAIRMEN. WE ARE IN THE PROCESS OF EVALUATING THE INFORMATION GATHERED AND ARE DEVELOPING GUIDELINES TO ASSIST VBRCs. THE IDEA OF VETERANS HELPING OTHER VETERANS, WHICH IS THE FOUNDATION OF THE VBRC, SHOULD BE ENCOURAGED AND SUPPORTED BY THE SBA, VETERANS VETERAN GROUPS, STATE GOVERNMENTS, AND ALL WHO HAVE AN INTEREST IN OUR VETERANS AND A STRONG ECONOMY FOR THIS COUNTRY.

MR. CHAIRMAN, I HOPE THAT I HAVE BEEN ABLE TO SHARE WITH YOU OUR PLANS FOR IMPLEMENTING PUBLIC LAW 99-272. I WANT TO ASSURE YOU THAT, AS ACTING ADMINISTRATOR, I INTEND TO SEE THAT THOSE PROVISIONS ENACTED INTO LAW WHICH AFFECT THE SMALL BUSINESS ADMINISTRATION ARE ADMINISTERED TO THE BEST OF OUR ABILITY.

THIS ENDS MY PREPARED STATEMENT AND I WILL BE HAPPY TO ANSWER ANY QUESTIONS YOU MAY HAVE.

Section 18006 - Attachment #1

SMALL BUSINESS ADMINISTRATION

SBA NOTICE

TO:	Disaster Area Directors Regional Administrators District Directors Branch Managers	NOTICE NO. 5000-129 EFFECTIVE 4/10/86

SUBJECT: Effect of Budget Reconciliation Act of 1985 on Disaster Lending

As you know, the Consolidated Budget Reconciliation Act of 1985 (Public Law 99-272) was signed by the President on April 7, 1986. That law has the following effect on disaster lending:

1. "Agricultural enterprises," as defined in Section 18(b)(1) of the Small Business Act, are no longer eligible for SBA disaster loans, physical or EIDL. This applies to all disasters declared on or after October 1, 1985. Any loan application from agricultural enterprises for such disasters that were not formally approved by COB April 7, 1986, are to be returned to the applicant with an appropriate explanatory letter. SBA will still consider disaster loan applications from small businesses in agricultural areas (e.g., feed dealers, farm implement dealers, etc.) as before, but not from an agricultural enterprise itself. Where we have issued a declaration, a farmer may still elect to come to SBA if the loan request is strictly to cover physical damage to his home or personal effects rather than to the farm, crops, or related machinery, equipment, fixtures, etc.

2. Sections 7(b)(3) (Federal Action Economic Injury, including PIK) and 7(b)(4) (Currency Devaluation Economic Injury) have been repealed effective October 1, 1985. Because there were no declarations issued under either of these sections on or after October 1, 1985, current actions are not affected. Therefore, reconsiderations and appeals on Section 7(b)(3) and (4) disasters can still be considered if they are filed within appropriate timeframes.

Edwin T. Holloway
Associate Administrator for
Finance and Investment

Section 18006 - Attachment #2

U.S. SMALL BUSINESS ADMINISTRATION
WASHINGTON, D.C. 20416

APR 9 1986

Honorable Vance Clark
Administrator
Farmers Home Administration
Washington, D. C. 20250

Dear Mr. Clark:

The Budget Reconciliation Act of 1985 (P.L. 99-272), which was signed by the President on April 7, 1986, makes "agricultural enterprises," as defined in Section 18(b)(1) of the Small Business Act, ineligible for disaster loans, both physical and economic injury. This provision is effective for disasters declared on or after October 1, 1985.

To implement this legislation we will no longer accept applications from agricultural enterprises resulting from disasters declared by the Small Business Administration after the close of Fiscal Year 1985. Any loan applications from agricultural enterprises for such disasters that were not approved by SBA by COB April 7, 1986, will be returned to the applicant. We will still accept disaster loan applications from small businesses in agricultural areas (e.g., feed dealers, farm implement dealers, etc.) as before, but not from an agricultural enterprise itself. Where we have issued a declaration, a farmer may still elect to come to SBA if the loan request is strictly to cover physical damage to his home or personal effects rather than to the farm, crops, or related machinery, equipment, fixtures, etc.

I would greatly appreciate your issuing appropriate instructions to your field offices in this matter. Notwithstanding our previous memoranda of understanding, no referrals should be made by FmHA to SBA for disaster assistance for damage from any disasters declared by SBA on or after October 1, 1985. Hopefully, this will help alleviate any confusion that may result from the changes contained in the Budget Reconciliation Act.

Thank you for your cooperation.

Sincerely,

Edwin T. Holloway

Edwin T. Holloway
Associate Administrator for
Finance and Investment

Section 18006 - Attachment #3

U.S. SMALL BUSINESS ADMINISTRATION
WASHINGTON, D.C. 20416

April 9, 1986

TO ALL MEMBERS OF CONGRESS:

The Consolidated Budget Reconciliation Act of 1985 (P.L. 99-272) has mandated changes in the Small Business Administration's disaster lending program that I would like to bring to your attention.

"Agricultural Enterprises" as defined in Section 18(o)(1) of the Small Business Act ("...those businesses engaged in the production of food and fiber, ranching, and raising of livestock, aquaculture, and all other farming and agricultural related industries;...") are no longer eligible for either physical or economic injury disaster loans from SBA. This provision is effective for all disasters declared on or after October 1, 1985. Accordingly, we cannot accept any future disaster loan applications from agricultural enterprises as a result of any disasters declared after Fiscal Year 1985. The few applications we had from those disasters which were not acted upon by April 7, 1986, have been returned. Of course, disasters declared prior to October 1, 1985, are not affected by this law.

SBA will still consider disaster loan applications from small businesses in agricultural areas (e.g., feed dealers, farm implement dealers, etc.) as before, but not from an agricultural enterprise itself. Where we have issued a declaration, a farmer may still elect to come to SBA if the loan request is strictly to cover physical damage to his home or personal effects rather than to the farm, crops, or related machinery, equipment, fixtures, etc.

The new law also repealed Sections 7(b)(3), (Federal Action Economic Injury) and 7(b)(4) (Currency Devaluation Economic Injury) of the Small Business Act.

However, actions resulting from declarations issued prior to October 1, 1985, continue to be considered by SBA as before.

All of our offices have been notified of these changes and press releases will be issued by our offices in affected areas. With your assistance, all affected individuals will receive notice of the changes and can plan accordingly. Thank you for your cooperation.

Sincerely,

Edwin T. Holloway

Edwin T. Holloway
Associate Administrator for
Finance and Investment

Section 18013 - Attachment #4

SMALL BUSINESS ADMINISTRATION

SBA NOTICE

TO: Regional, District and Branch Offices

NOTICE NO. 5000-125

EFFECTIVE 3/28/86

SUBJECT: Budget Reconciliation Bill (HR 3128)

The Budget Reconciliation Bill (HR 3128), has been passed by Congress. If it is signed by the President, the bill would make some major changes to the Small Business Act. (Please note that this legislation is a product of the last session of Congress and has no direct bearing on the Administration's current proposal to abolish the SBA loan programs beginning in FY 1987). Except as otherwise noted, the changes apply to every loan approved on or after the date the President signs the bill, regardless of when the application was received.

If signed, the bill would make the following changes in F&I programs:

1. SBA would charge a guaranty fee on loans with maturities in excess of twelve months equal to two percent (2%) of the guaranteed portion of the loan. For loans with a maturity of twelve (12) months or less, the guaranty fee continues to be one-quarter (1/4) of one percent of the guaranteed portion of the loan. In addition, guaranty fees for all development company loans remain unchanged. 502 loan fees continue to be one percent (1%) of the guaranteed portion of the loan, and 503 debentures do not require the collection of a guaranty fee.

2. SBA's percentage of guaranty would be as follows:

   (a) SBA shall guarantee 90 percent of a loan as long as the total amount outstanding (including the loan under consideration) does not exceed $155,000, except as provided under paragraphs (c) and (d) below.

   (b) SBA shall guarantee no more than 85 percent and not less than 70 percent, of loans in excess of $155,000 as long as the total amount approved and outstanding does not increase SBA's exposure beyond $500,000. Decisions to guarantee such loans in amounts between 70 percent and 85 percent shall be made on a case-by-case basis. A lender's request for less than a 70-percent participation by SBA shall not be approved unless a lesser percentage is necessary due to the statutory $500,000 ceiling on SBA exposure, except as provided in paragraphs (c) and (d) below.

(c) SBA shall guarantee no more than 80 percent of that portion of a loan used to refinance a debt owed to a bank or other lending institution. This means that the debt payment portion of the proceeds may range between the maximum of 80 percent and the minimum of zero. Therefore, the blended guaranty percentage of the total loan will reflect the respective percentages of guaranty for the refinancing and the remaining portion of the loan.

(d) SBA's participation may be reduced below the above-stated percentages if the lender requests the reduction under the Preferred Lenders Program. This means that loans of less than $155,000 can be approved under PLP with less than a 90 percent SBA guaranty (such as 75 percent).

3. The SBA size standard for an agricultural enterprise (SIC Codes 0111-0191 and 0212-0291) would be increased. An agricultural enterprise would be a small business concern if it (including affiliates) has annual receipts not in excess of $500,000.

HR 3128 contains various other provisions that would affect SBA loan programs, including a pilot program for the sale of development company debentures to private markets without using the Federal Financing Bank. Agricultural enterprises (farms) would no longer be eligible for SBA disaster assistance. (This would apply to all disasters declared after October 1, 1985.) The non-physical disaster loan program would also be eliminated. (This would also apply to disasters declared after October 1, 1985.)

The provisions in this memorandum are based on the conference report of Congress, which could vary from the final enrolled bill. You will be notified promptly of any change. Appropriate SOP and regulation changes will follow if the bill is signed into law.

I want to emphasize one final time that the above recited possible changes are applicable only if the President signs the bill into law, and then would apply to every loan approved on or after the date of the President's signing of the bill.

Edwin T. Holloway
Associate Administrator
for Finance and Investment

SMALL BUSINESS ADMINISTRATION

SBA NOTICE

TO: Regional, District and Branch Offices

NOTICE NO. 5000-127

EFFECTIVE 4/8/86

SUBJECT: Budget Reconciliation Bill (HR 3128)

President Reagan signed the Budget Reconciliation Bill (HR 3128) yesterday. This means that the program changes outlined in SBA Notice 5000 - 125, dated March 28, are effective for all loans approved on or after April 7, 1986. Appropriate SOP and regulation changes will follow.

Edwin T. Holloway
Associate Administrator
for Finance and Investment

EXPIRES 10/1/86

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SBA Form 1353 (3-83)

SMALL BUSINESS ADMINISTRATION

SBA NOTICE

TO: All Regional, District and Branch Offices

NOTICE NO.

EFFECTIVE

SUBJECT: Clarification of Notice No. 5000-127

This Notice supersedes Notice No. 5000-127, dated April 8, 1986.

President Reagan signed the Budget Reconciliation Bill (HR 3128) on Monday night, April 7, 1986. The program changes outlined in SBA Notice 5000-125, dated March 28 are effective for all loans approved on or after April 8, 1986. In other words, loans approved on or before April 7 are effective as they were approved.

Appropriate SOP and regulation changes will follow.

Edwin T. Holloway
Associate Administrator for
Finance & Investment

EXPIRES

SBA Form 1353 (3-83)

The CHAIRMAN. Thank you very much, Mr. Heatherly.

What I am going to do is to give 10 minutes to each Senator, so we go right around the table in an attempt to make sure that all questions are asked and responses given.

I would like to start off the questions, Mr. Heatherly, on the matter of morale at the SBA. I said at the outset that the appearance has been given that you're attempting to achieve de facto what cannot be achieved de jure. I want to emphasize that point by saying that we're both well aware of the reauthorization of the Small Business Administration.

Now let's move over to the appropriations or the budget process. Certainly insofar as the Small Business Committee is concerned, insofar as the Appropriations Committee in the Senate is concerned, there is nothing being considered to eliminate the agency or to transfer it—nothing.

I'll go a step further, and I have Senator Gorton here so he can confirm, but I met as recently as Friday with Senator Domenici, and even though his budget proposal is somewhat more reduced than my proposal, again there is nothing in his proposal that calls for either the elimination or the transfer of the Small Business Administration.

I know of no such initiative. Neither do I know of such an initiative on the House side.

So I think it is a fair statement to make that the preponderance of the evidence is such that the only thing that would even suggest the elimination or the transfer of the agency is that which is embodied in the President's proposal. That's a rather slim reed to lean on, at least as far as any great expenditure of time and energy is concerned, especially from the de facto head of the agency.

Having laid that background, I now get to the matter of the personnel, because this agency, like all others of Government, is only as good as its personnel. The question I would now raise is if you were somebody within the Small Business Administration who had an opportunity to go elsewhere or whether you were somebody who was seeking to get into the Small Business Administration, would you go elsewhere or would you go ahead and apply for a job at the Small Business Administration in light of the comments that have been put in the record by you?

In the April 16, 1986 article of the Philadelphia Inquirer involving promotion of the President's proposal and your plans for SBA it states, and I quote:

"Nationwide there would be a cut of more than 50 percent in the SBA's total of about 4,000 employees."

Then to move to an article which appeared in USA Today, you made the statement:

"I was surprised by the controversy over replacing a handful of midlevel political appointees. If that was controversial, I can't wait for the reaction to some other things I have planned down the road."

Then in the same article that appeared in the Philadelphia Inquirer, having relieved yourself of your comments on the SBA personnel, you had choice remarks for the Congress also. You're fairly evenhanded in that regard. [Laughter.]

". . . but he saved some of his harshest criticism for the Members of the House and Senate who must approve the changes terming the lawmakers 'singularly inept at meeting their responsibilities.' Heatherly said Congress is without discipline, without guts to cut any program that benefits any constituent in any district."

I also would then go ahead and will place in the record those communications that you've delivered to the SBA community as a whole, which again, taken as a matter of perception, would create tremendous doubt as to whether or not there will even be an agency.

[Material follows:]

PHILADELPHIA INQUIRER WEDNESDAY, APRIL 16, 1986

SBA head opens fire on critics

He defends plan to abolish agency

By Peter Binzen
Inquirer Staff Writer

Charles L. Heatherly, acting head of the U.S. Small Business Administration, yesterday came out swinging as he launched what he conceded was an "uphill battle" to win support for abolishing the SBA as an independent agency.

In an interview at The Inquirer, Heatherly defended his firing of six of the SBA's 10 regional administrators on his first day in office two weeks ago. At the same time he sharply assailed his predecessor, fellow Republican James Sanders.

Heatherly, 43, accused Sanders of opposing President Reagan's plan to liquidate the SBA's loan programs, to cut its work force in half and transfer its remaining activities to the Commerce Department with estimated savings of $1.4 billion during the 1987 fiscal year.

But he saved some of his harshest criticism for members of the House and Senate who must approve the changes.

Terming the lawmakers "singularly inept" at meeting their responsibilities, Heatherly said: "Congress is without discipline and without guts to cut any program that benefits any constituent in any district."

"It's an uphill battle," he said of Reagan's campaign to shrink the SBA. "I have no illusions that it's going to be easy. Any time you try to terminate programs like the guaranteed loans with specific constituencies, they are going to be vocal in opposition."

His visit to Philadelphia marked the acting SBA administrator's first foray outside Washington since he took office April 1. He spoke last night at a dinner of the Delaware County Chamber of Commerce. He said he would carry his campaign to Chicago next week and to the West Coast at the end of the month.

Heatherly started the day by meeting the SBA's Philadelphia region staff at its Bala Cynwyd headquarters. He delivered what John W. Cleek, the acting regional administrator, described as a "pep talk."

In the subsequent interview, however, Heatherly said that under Reagan's plan the regional office's work force of 325 would be reduced by more than half. And nationwide, there would be a cut of more than 50 percent in the SBA's total of about 4,000 employees, he said.

Heatherly named Cleek acting regional head after firing the incumbent, Robert T. Lhulier, April 1. He declined to say whether Cleek would win the permanent appointment but, noting his own temporary status, said with a smile: "We are all actors, as our President."

The acting administrator's dismissal of the six regional heads had been attacked by small-business advocates as a "bloodbath" and an "April Fool's massacre." Others argued that, through the firings, Heatherly sought to dismantle the agency without waiting for congressional action.

Heatherly termed this argument "ludicrous on its face."

"The action was not a camouflage to cripple the agency or alter its field structure," he said. "The six employees were political appointees, not career officials. And they are being replaced with new political appointees who will help me carry out all the responsibilities of my office."

Lhulier, the regional head in Philadelphia, was fired because of what Heatherly termed his "close, personal association" with Sanders. Heatherly said it was "well known in Washington" that Sanders fought the President's proposals vigorously and that he "admonished and punished" employees who supported them.

When it was pointed out that Sanders, in an SBA news release in February, expressed his full support for the plan to dismantle the SBA, Heatherly replied: "If Sanders was in support it was the best kept secret in Washington."

SBA backers have argued that the agency, if placed inside the Commerce Department, would lose its "independent voice for small business." Heatherly said that those who believed the SBA enjoyed any real strength now needed a lesson in Washington politics.

"It's a misconception that independence per se carries clout," he said. "It doesn't. In theory, the SBA administrator reports to the president. In practice, the administrator does not now have and never has had direct access to the president."

Heatherly said the SBA will be far stronger if represented by the secretary of commerce. "We are gaining allies, gaining clout by this move," he said. "We're not losing anything."

He said it was probably true 30 years ago that the Commerce Department spoke for big business. "That's not true under this administration and I don't think it can ever be true again," he said.

Heatherly also denied that elimination of SBA loan guarantees would adversely affect small businesses generally or the national economy.

When the cuts were first proposed early last year Philadelphia business leaders expressed concern that start-up businesses would be hard pressed to obtain loans. The Gallery II shopping mall in Center City is one of many commercial developments here that got its start with SBA-backed loans.

But Heatherly said there was no evidence to support the view that either regional economies or the nation would be adversely affected. "Banks are increasing their loans to small business at about 10 percent a year," he said. "More and more capital is available in the private credit markets. The private markets can absorb this."

A Tennessee native, Heatherly spent six years with the National Federation of Independent Business, the nation's largest small-business association, before going to Washington. The NFIB opposes Reagan's plans for putting the SBA into the Department of Commerce.

The CHAIRMAN. How do you think all of this—what do you think the impact of all of this public media emanating from you, not from interest groups now but from you—how do you think that and also your communications with SBA personnel themselves impacts on the morale of the Small Business Administration and the ability of the Administration—that is, its people—to do their jobs and do them excellently?

Mr. HEATHERLY. Mr. Chairman, I think that's a fair question and it's something that I am concerned about. It is something that I have taken actions to deal with.

I would like to submit as an additional statement for the record, as additional background in reference to your opening comments, a letter from James C. Miller III, Director of OMB, dated today, which I would like to read. It's only one paragraph.

The CHAIRMAN. Please go ahead.

Mr. HEATHERLY. It is addressed to me. It says:

> Dear Chuck: As you know, the Consolidated Omnibus Budget Reconciliation Act reauthorizes the Small Business Administration through 1988. Since the enactment of this legislation, questions about administration policy toward SBA have been raised. I would like to clarify that although this act represents a movement in the right direction, the President has not decided to abandon the effort to achieve the additional benefits that would result from the adoption of his 1987 budget proposal for SBA. Therefore, the administration remains committed to the policy represented by the President's budget.
>
> We look forward to your continuing efforts on behalf of the President.
>
> Signed James C. Miller.

I would like to submit that for the record.

The CHAIRMAN. It will be put into the record at this point.

[The letter from Mr. Miller to Mr. Heatherly follows:]

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

APR 28 1986

Mr. Charles L. Heatherly
Acting Administrator
Small Business Administration
1441 L Street, N.W.
Washington, D.C. 20416

Dear Chuck:

As you know, the Consolidated Omnibus Budget Reconciliation Act (P.L. 99-272) reauthorizes the Small Business Administration (SBA) through 1988. Since the enactment of this legislation, questions about Administration policy towards SBA have been raised. I would like to clarify that although this Act represents a movement in the right direction, the President has not decided to abandon the effort to achieve the additional benefits that would result from the adoption of his 1987 budget proposal for SBA. Therefore, the Administration remains committed to the policy represented by the President's Budget.

We look forward to your continuing efforts on behalf of the President.

Sincerely yours,

Jim

James C. Miller III
Director

Mr. HEATHERLY. Now, with regard to the personnel action, I went to Philadelphia and subsequently to Chicago to visit our regional offices. I met with our staff to make the point I made on April 2 in a meeting with our headquarters management and in my walks around the building talking to employees, that, although I am committed as the Deputy Administrator and Acting Administrator to pursuing the President's budget proposals, I fully recognize that we all have jobs to do, that the operations of the agency must go on, obligations must be met, and that they should not be preoccupied or overly concerned about this debate that is going on at the national level. The issue will be decided by the Congress and the President and resolved at some point, and, in the meantime, our employees, as professionals, have jobs to do and that I fully support them in the performance of their duties. I will be visiting other regional offices in the near future.

I have visited our regional offices and district offices to make that personal point with them, and I've tried to shore up the morale at headquarters.

Undoubtedly, the signal that we are still pursuing this budget proposal seriously has an unavoidable effect on the morale. People who may not have taken this seriously in the past may begin to worry about it and may worry about their jobs. That climate is there and I can't do very much about it except to reassure them that I expect them to carry on their responsibilities as my staff and at the management level.

I tried to make clear in my April 2 communique to all SBA employees, on my second day in office that my first responsibility is the carrying out of the mandated programs of the agency. I listed that first among three duties because it is primary and takes priority. Nothing that I do in the other two areas should detract from performance of that responsibility.

As I said in an earlier private conversation with Chairman Weicker, all SBA employees, whether career or political, have an obligation to obey the law and to see that the law is fully and faithfully implemented. Political appointees have an additional duty to support the President's proposals. This does not detract from the other responsibilities that we have.

With regard to some of my statements about the 50 percent of employees, Mr. Chairman, I did not volunteer that fact. The reporter was pressing me on what the impact of the President's proposal would be if it were enacted and asked me several times. I said that, as a ballpark figure, if the transfer occurred and if the loan programs were terminated and the loan portfolio turned over to Treasury for liquidation, it would have an effect on approximately 50 percent of our employees across the board.

It is not something that I am running around bragging about or talking about. The reporter insisted on an answer and I tried to give him a close approximation. Obviously we have not yet worked this out. We have not invested much time in those contingency plans because the reality would not warrant that.

The CHAIRMAN. Probably part of the uneasiness emanates from some of your past activities. In 1981 you edited a book, I believe, called "Mandate for Leadership." In that book I am now going to quote:

In the Department of Education and Energy, for example, the stated goals of abolitionist cannot be accomplished without an act of Congress. However, it is possible to remove all or most of the personnel and functions from a given unit, thus making it more amenable to control and eventual elimination.

Is that your philosophy as it applies to the Small Business Administration?

Mr. HEATHERLY. Senator, I was merely the general editor for that book. There is a disclaimer at the beginning of the book which most such volumes carry, that the views expressed in each chapter are those of the authors of each chapter. So each of those sections has an author, whether it is the section on Executive orders or the section on the Department of Energy or the Department of Education. The views in those chapters are those of the authors, not necessarily of the editor or the Heritage Foundation.

With regard to that specific statement, I think it's a pretty commonsense statement that any agency head has certain reorganization authorities. As long as the functions of offices and functions of programs are carried out, the precise manner in which units are organized and reporting relationships established are within the prerogative of the agency head. I think that's pretty well recognized across Government.

The CHAIRMAN. Now as I understand it, prior to this activity you were previously employed as Deputy Under Secretary for Management of the Department of Education; is that correct?

Mr. HEATHERLY. Subsequent to that, Senator.

The CHAIRMAN. Prior to this position?

Mr. HEATHERLY. Prior to this position, yes, I was for 2 years Deputy Under Secretary for Management and for 10 months prior to that the Executive Secretary to Terrel Bell.

The CHAIRMAN. And at the time that you worked as Executive Secretary for Terrel Bell were you advocating the President's proposal to eliminate a Cabinet-level department for education?

Mr. HEATHERLY. I believe Secretary Bell was advocating that, too, Senator.

The CHAIRMAN. Were you advocating that within the Department of Education at the time you were working for the Department of Education?

Mr. HEATHERLY. Yes, Senator, I was. All political appointees were expected to advocate that.

The CHAIRMAN. So, in other words, at the time you accepted a job to work for the Department of Education you were committed to eliminating the Department of Education?

Mr. HEATHERLY. As a Cabinet agency, yes, Senator. The Secretary supported that objective.

The CHAIRMAN. Senator Kerry.

Senator KERRY. Why did you accept this job? [Laughter.]

Mr. HEATHERLY. Well, Senator, I have a deep interest in and a commitment to the small business sector of this society. I understand its importance. I worked for 6½ years for the Nation's largest trade association representing small businesses. I know something about its problems, its hopes, its aspirations, and I felt that the President's proposals for SBA had not been given a fair hearing, that they had not been vigorously pursued, and that someone ought to do that.

When the question was asked would I be interested, I said, yes, I would, and I accepted the job with eyes wide open as to the obstacles and difficulties involved.

Senator KERRY. In order, then, to be able to better assist business, small business?

Mr. HEATHERLY. I think that the small business sector of our economy will be well served by the President's proposals, yes, Senator.

Senator KERRY. Well, aren't you going to deprive yourself of your ability to take that experience and apply it if you eliminate the SBA as an independent agency?

Mr. HEATHERLY. If the agency is transferred to the Department of Commerce, as proposed by the President, there will be an Under Secretary for the Small Business Administration, an Executive Level III appointment; just as visible, just as strong as the present Administrator for Small Business Administration. I don't see any inconsistency in that, Senator.

Senator KERRY. Well, isn't it inconsistent with the state of the law?

Mr. HEATHERLY. I'm saying this is a proposal.

Senator KERRY. I understand you circulated a memo within the SBA that said a memorandum will follow shortly which will articulate in greater detail the mechanism by which the transfer will be affected. Isn't that a little bit premature?

Mr. HEATHERLY. No, I believe the memo said—that was my letter to all employees—that the main features of the President's proposal were a matter of public record and were well known, and I didn't see any——

Senator KERRY. Well, let me quote from it:

> Details of the administration's transfer plan will be explained in a separate memorandum very shortly.

Mr. HEATHERLY. Transfer plan, yes.

Senator KERRY. So when is that memo going to be sent to the employees?

Mr. HEATHERLY. That, Senator, was a way of deferring a detailed discussion of what is in the President's proposal for the Department of Commerce. I didn't want to describe the transfer bill section by section. For example, we intend to circulate copies of the transfer bill and a section-by-section analysis so that employees know exactly what is being proposed. That's all the memo intended.

Senator KERRY. You don't view that as slightly premature before Congress decides whether or not it wants to go back on its own plan as espoused last year to keep the SBA intact and to proceed as per the COBRA?

Mr. HEATHERLY. I think employees, when these things are being debated and discussed, deserve all the information that we can provide to them about what is being proposed. I don't understand why that is premature.

Senator KERRY. You don't view that as having any kind of negative impact on morale?

Mr. HEATHERLY. I think when people have information—accurate information—it tends to assist morale rather than detract from it, Senator.

Senator KERRY. You were recently quoted, among a number of quotes which I guess I share a certain concern about and which the chairman has expressed on some, but you were quoted as saying that, "Washington associations are out of touch with the 14 million small businesses in America which favor the end of most SBA programs."

I wonder with whom you are comparing those associations.

Mr. HEATHERLY. I'm not sure I understand that question.

Senator KERRY. Well, who is out of touch, all these associations, and who specifically—when you say most of them favor the termination of those programs, who are you talking about? What are you basing that on?

Mr. HEATHERLY. Well, the polls that I have seen have actually asked small business people what they think of SBA programs and what's important to them. For example, the polls that I have seen showed that the majority of small business people do not think that the lending programs, which are the heart of the organization in terms of budget, need to be continued.

To give you one prominent example, the National Federation of Independent Business polled its members through mandate 453 in February and March 1984 on 5 specific SBA programs. The majority of members voted to terminate all five of those SBA programs, including all lending activities.

The National Association of Manufacturers surveyed its 9,000 small manufacturers, which is the largest segment of the membership, in 1985 and came to about the same conclusion—that their small manufacturers did not view these lending programs as essential and would rather have them terminated.

I think there are ample surveys that demonstrate that the small business sector is hardly clamoring at the doors to continue these programs.

Senator KERRY. Again, I think we are sort of playing a game here a little bit because I have a letter right here dated very recently from Mr. John Motley, who is the director of Federal legislation for the NFIB, and he says:

> It has come to my attention that the conclusions of some of our policy research is being misrepresented in recent communications to Members of Congress,

and he goes on to discuss their support for the continuation of SBA in its current form.

> Nowhere was there an indication from the membership that SBA should be abolished and its functions buried in the Department of Commerce. In fact, we polled the question of whether or not the SBA should have Cabinet-level status, and the membership result was favorable.

And it goes on.

I just think that that's at odds with the statements of many, many small businesses around the country, particularly with respect to credit programs.

Let me just ask you about the credit programs, if I can, quickly. In light of your stated commitment for the elimination of all credit programs, how are you going to suggest that many of these start-up

companies who don't qualify for conventional financing—where are they going to find that financing?

Mr. HEATHERLY. Well, Senator, the evidence that I've seen shows that there is increasing availability of bank and other lending sources of funds for venture capital and for expansion of existing businesses.

Second, a very large proportion of SBA loans do not go to start-ups. Many of them are repeat borrowers. We do not feel that there is under current economic conditions and current interest rate conditions a compelling case for continuing these guarantee programs. They benefit only a very, very small proportion of the small business sector at the expense of the taxpayer. Other small business people who are paying these taxes are, in effect, in competition with people down the street or down the block who are receiving Government subsidies.

Senator KERRY. You don't believe—have you talked to many of the businesses? Have you gone out and actually sat down with people who have received loans, SBA credit of one kind or another?

Mr. HEATHERLY. Senator, I don't doubt for a moment that there are individual businesses who benefit from the SBA loan programs. Obviously this money goes to someone and they benefit from it, at least in the short term. That's clear. About 20,000 firms receive guaranteed loans out of a total of 12 million business firms in this country.

What I'm saying is that on the macro level, on a national policy level, there's not a compelling need for this program in terms of other claims on the resources of our society.

Senator KERRY. And where have you actually demonstrated that fact? What are the figures that show that companies at the margin will be able to find that financing in one form or another elsewhere, particularly when interest rates may not be as low as they are today? The studies I have seen, conducted by the General Accounting Office and other Government agencies show that SBA loan guarantees play a vital role in supporting smaller companies. What evidence do you have?

Mr. HEATHERLY. But, Senator, 99 percent plus of small business companies do find their financing from other sources. We're only talking about two-tenths of 1 percent of the small business sector who rely on SBA loan guarantees, so how do the other 99 percent manage, Senator?

Senator KERRY. Well, a lot of different people manage in different ways, but if you had talked to some of these companies as I have, it's clear that they've gone in countless numbers of times for conventional financing and been refused. I can cite you example after example of companies in Massachusetts which are now productive and providing additional taxes and providing additional employment and have grown only because they were able to get SBA assistance after being turned down for private venture capital, for conventional bank loans.

It seems to be that's exactly what the SBA is all about. If you want to go into conventional financing Mr. Heatherly, you ought to be applying for a different job, but this is precisely what the purpose of the SBA is to do—to reach out to that smallest percentage.

Mr. HEATHERLY. Senator, I would only reiterate that I do not doubt—and no one has ever doubted or claimed—that there aren't some businesses that benefit from this, but I think I would ask you to talk to the people who are competing with these firms that have the loan subsidies and ask what they think of Government helping their competition.

Senator KERRY. When you first came in within a matter of hours you fired six of the SBA's Regional Administrators. I wonder what judgments you made in those 48 hours that decided they were the people who had to go and that that was the way to begin your tenure.

Mr. HEATHERLY. I will answer that question, Senator. I want to come back, if I may, for just 30 seconds to respond to your earlier statement about the NFIB, letter from Mr. Motley.

The NFIB, while I worked there for 6½ years, always regarded the mandate poll as the plenary body, so to speak, the sovereign voice of the members on policy matters. They did not use special surveys, or random sample surveys to determine policy. They used random sample surveys to do research on particular issues like product liability or whatever.

NFIB has not taken a mandate poll on these SBA issues subsequent to mandate 453. As far as I'm aware, those mandate ballots are still binding regardless of special surveys they may have taken since then.

With regard to the Washington staff, the Washington staff is free to interpret information given by its members, but it's curious to note that they have never polled their members specifically on the President's proposals regarding SBA.

Regarding the dismissal of the six Regional Administrators——

Senator KERRY. Before you answer that—I know we're getting to the end of this—I would just like to insert into the record, if I may—I would like to ask unanimous consent to have this letter put in as part of the record.

[The letter from Mr. Motley to Senator Bumpers follows:]

NFIB National Federation of Independent Business

The Guardian of Small Business®

April 24, 1986

Honorable Dale Bumpers
United States Senate
Washington, D.C. 20510

Dear Dale:

NFIB -- representing more than 500,000 small business owners throughout the United States -- has always taken policy initiative and direction from its membership as indicated through regular, bi-monthly MANDATE surveys.

It has come to my attention that the conclusions of some of our policy research is being misrepresented in recent communications to Members of Congress. The results of MANDATE #453 are being circulated on the Hill, by the SBA's office of Congressional liaison, in an apparent attempt to undermine the progress made toward SBA reform. I say this because Mr. Nelson's letter does not include all of the survey results bearing on the SBA question. It is clearly an attempt to try to build a case based on half-truths and omissions.

MANDATE #453, mailed to our membership in February/March 1984, represented the first step in our efforts to assist in the restructuring and reform of SBA. Not a simple task. The Mandate was used to determine the degree of support various SBA programs and reforms had in NFIB's membership.

Following that, in April, 1984, a more detailed survey was conducted by V. Lance Tarrance Associates, a professional survey and marketing firm based in Houston, Texas. It is, and, was, our common practice to conduct such in-depth follow-up surveys in issue areas where more information from our membership is needed to detail and clarify their policy desires. We have a library full of such diverse research, ranging from energy conservation to fringe benefits, and product liability to small business and banking.

Government Relations and Research Office
600 Maryland S.W. Ste 700
Washington, D.C. 20024
202-554-9000

A copy of the results of this Lance Terrance survey, entitled "Small Business Evaluates the SBA," is enclosed for your review.

The results of these efforts provided us with two important policy directions. The first is that SBA is viewed by small business as its champion. Advocacy is clearly the agency's principle function and should command the greatest relative amount of attention and resources. Secondly, programs for special subgroups within the small business community should be eliminated or consolidated within major program areas.

Nowhere was there an indication from the membership that SBA should be abolished or its functions buried in the Department of Commerce. In fact, we have polled the question of whether or not the SBA should have cabinet-level status, and the membership result was favorable.

Based on all of this information, we proposed a radical restructuring of the SBA in January of 1985. Its recommendations became the basis for the $2.5 billion savings you just enacted in the Reconciliation bill. Earlier this year we put forward a second restructuring plan that would further reduce programs and spending and completely move all lending programs to the private sector.

As you can see, and it is the strength of our policymaking process, the polling and surveying of our membership determined the direction and content of our SBA reform packages. Our 1986 plan remains to be enacted, but the first constructive steps have already been taken.

I am sorry about the length of this letter, but the misuse of our polling data needed to be corrected. I hope this information clarifies NFIB's policymaking procedures and position for you.

Sincerely,

John

John J. Motley, III
Director of Federal Legislation

Enclosure

3270D/vr

Senator KERRY. I think it is quite clear from the record that you're not representing the NFIB position accurately, and I don't want to get into it. Mr. Motley can speak for himself, and I think his letter does.

I was quoting from his letter when I said, "Nowhere was there an indication from the membership that SBA ought to be abolished or its functions buried in DOC."

It goes on in considerable detail to explain what they think is important, and I will let the letter speak for itself.

Mr. HEATHERLY. I'm sure the letter speaks for itself, but I reiterate that the NFIB has never polled its members regarding the President's proposals.

Senator KERRY. Well, that may well be true. I could—I'm sorry, Mr. Chairman.

The CHAIRMAN. The Senator from Minnesota has graciously accorded me 1 minute just to raise several matters.

First of all, regardless of NFIB—and I concur with the remarks made by the distinguished Senator from Massachusetts—there is ongoing at the present time the White House Conference on Small Business meetings throughout the United States. The delegates that will attend the national conference, are appointed by the Senate, by the House, and 100 by the President of the United States, and then at State meetings they elect their own delegates to attend the national conference.

So let me give you the latest poll, OK, and let's go ahead and take it as an official one and not, I might add, a mouthpiece of the Senate or the House. This is in preparation for the White House Conference on Small Business to begin on August 17.

At the State level conferences small business men and women have been offering recommendations for Federal action. Of the 47 conferences held to date, 41 adopted recommendations to retain an independent Small Business Administration or to elevate the position to Cabinet-level status. Only one State suggested the agency should be moved into the Commerce Department; five others were neutral. There's the latest official result. Now do you dispute that?

Mr. HEATHERLY. I don't dispute those figures.

The CHAIRMAN. I might add I believe several of these conferences have also called for your resignation. [Laughter.]

Mr. HEATHERLY. I believe that's inaccurate, Senator—only one conference.

The CHAIRMAN. One conference.

Mr. HEATHERLY. Yes.

The CHAIRMAN. Kansas.

Mr. HEATHERLY. May I make a technical correction about the voting at these conferences? There's a misconception around—and if you wish to ask for verification of this from the conference staff, I think they'll back me up—the conference delegates per se have not voted on any resolutions, Senator. The issue forums, the breakout sessions, do make recommendations which go into a pot to be considered at the national level. The conference participants as a whole have not voted on any recommendations affecting me or SBA.

The CHAIRMAN. If they do vote as I've indicated to you, will you be bound by their decision?

Mr. HEATHERLY. Well, I think we'll all follow those decisions with great interest, Senator.

The CHAIRMAN. With great interest?

Mr. HEATHERLY. Yes.

The CHAIRMAN. My last comment because my time is up, on the matter of your employment at the Department of Education, former Secretary Terrel Bell has recently written about those who advocated the abolition of the Department of Education, and he said, and I quote:

> These radical advocates have influential colleagues and allies inside the White House. They claim a few kindred souls in the House and Senate. They have the capacity to threaten and frighten those who openly or covertly oppose the enactment of their agenda.

Secretary Bell has been in contact with my staff and indicated that you were clearly one of those about whom he was speaking.

Mr. HEATHERLY. I'm flattered.

The CHAIRMAN. At that time you advocated the President's proposal to eliminate a Cabinet-level position for Education. Today you're once again promoting the President's plan to eliminate an independent agency, but now you claim it's in order to elevate an agency for small business to Cabinet-level position. Is there any difference between your mission here and your mission at the Department of Education?

Mr. HEATHERLY. Yes, there's a difference. There's also a similarity in that we never set out to abolish the Department of Education and I defy any member of this committee or staff or Secretary Bell to find any statement ever made advocating the abolition of the Department of Education.

I did support the elimination of Cabinet status and the merger with or creation of some other agency. I never talked about the abolition of that agency. I think if you read the Education chapter——

The CHAIRMAN. Any more than you're advocating the elimination of SBA; you just want to transfer it; right?

Mr. HEATHERLY. We are advocating the elimination of the loan programs as the only major program elimination and the transfer of the most vital functions to the Department of Commerce. I think it's scare tactics to frighten small business people into thinking that we're proposing to abolish SBA which is generating these resolutions at the White House Conferences. There has not been a fair hearing on what is actually being proposed.

The CHAIRMAN. Senator Boschwitz.

Senator BOSCHWITZ. I find your statements of trying to cast scare tactics upon others rather remarkable. In your testimony you said that interest groups were creating confusion. You said that your statements to the press were made in a light-hearted way, that you didn't have experience with the press.

However, you were a Deputy Under Secretary and you also served close to Terrel Bell. It would seem to me you should have gained some experience with the press and you should have learned a long time ago that statements aren't made in a light-hearted way, particularly statements of the nature that you made.

You said that the reporter insisted on an answer. I must tell you I have a certain lack of sympathy with that. If you're going to be

an administrator of an agency that involves thousands of people and then expect us to believe that you had to answer because a reporter insisted on the answer—I bless the press, but, you know, a little tough-mindedness can be directed in other directions than just the disbandonment of the SBA.

For you to say, Mr. Heatherly, that your employees at the SBA should not be preoccupied with the idea that they might lose their jobs, you apparently haven't run anything before and perhaps your experience is not broad enough to do this job.

You say, "I can't do very much about the fact that they are preoccupied." That alarms me—that a person who is appointed by the President to run this agency, to run an agency involving thousands of people, feels that, "I can't do very much about it" when your employees at the SBA are preoccupied with a fear of discontinuation of the agency or their own jobs, particularly when you said to the press, albeit it as you say in a light-hearted way, that "50 percent of all employees across the board would be eliminated." I don't see from those kinds of statements that maybe they shouldn't be too preoccupied. But it's remarkable that you intend to run this agency or to even accommodate or bring about an orderly transition to the Department of Commerce when you make those kinds of statements.

Eventually, Mr. Heatherly, you're going to come before this body for confirmation even if we have to make legislative changes to accomplish that, which we would be intent on doing.

But I must tell you that when you make these kinds of statements before this committee this morning, when you join the SBA and within a week or the very day, I think, or the day after you became the Acting Director of the SBA you dismiss 6 of the 10 Regional Directors, how do you reasonably expect under these circumstances to conduct an agency even in a transitional way? That is my question, Mr. Heatherly.

Mr. HEATHERLY. Well, Senator——

Senator BOSCHWITZ. How do you expect to reasonably conduct an agency even in a transitional way assuming that you could make a transfer to the Department of Commerce—which has not been legislatively approved; as a matter of fact, legislatively denied? What kind of a way is this to run an agency?

Mr. HEATHERLY. Senator, you've asked a series of questions. Let me try to go back and answer them.

First of all, I think you've juxtaposed something unfairly. In my opening statement I said that I had made some statements in a facetious or light-hearted way which may have been misinterpreted. I did not make that characterization specifically with regard to the Philadelphia Inquirer interview. I was thinking, instead, of the statement made to the——

Senator BOSCHWITZ. I don't know what you were thinking about, but don't tell me I juxtaposed something and now you're going to tell me what you were thinking about.

Mr. HEATHERLY. It's——

Senator BOSCHWITZ. Pardon me, Mr. Heatherly.

Mr. HEATHERLY. It's leading——

Senator BOSCHWITZ. Pardon me, Mr. Heatherly. You said that you did not have experience with the press and, therefore, you

made statements in a light-hearted way. Now you're going to tell me what——

Mr. HEATHERLY. Some statements.

Senator BOSCHWITZ. Now you're going to tell me what statements you intended; is that correct? What did I juxtapose?

Mr. HEATHERLY. I did not make any light-hearted statements to the Philadelphia Inquirer. In the interview with the USA Today reporter, the concluding statement which was picked up and given a lot of circulation, was that if they think these dismissals were controversial, I can't wait to see their reaction to something else down the road. That was clearly facetious because what I was saying was that I didn't understand what was so controversial about replacing six political appointees; and if that was controversial, then any thing I do is likely to be controversial. That was clearly the vein in which it was offered.

Now, regarding the morale issue, which I agree, Senator, is a serious issue and a legitimate subject for this committee to ask about. I did not say that I didn't think I could do anything about preoccupation. I am trying to do something about the preoccupation. I'm trying to overcome that.

What I said was that I couldn't do anything about the climate of controversy if the press chooses to make me controversial or to give additional airing to the President's proposals that are in the budget. The estimate on the FTE transfers to Commerce for fiscal year 1987 are in the President's budget for anyone who wants to read it. It's there for anyone who wants to look at it and to infer what the impact will be on the work force.

I think that the only alternative to my advocating the President's proposal would be to say that any agency employee or any agency head must simply remain silent for the sake of employee morale. I think that employees are going to be aware that this is being debated. They're going to be aware that it's a remote possibility given the votes on this committee and the situation in this Congress. I have said that openly and candidly to everyone that I've spoken to. We realize this is not full battle and it's not something that is going to happen overnight.

Senator BOSCHWITZ. When you say now it's a remote possibility, in your letter on April 2, the personal message to all SBA employees, you said that your third task is to prepare the agency for an orderly transition to a new configuration at the Department of Commerce once the transfer of functions have been enacted into law.

I suppose that one could conclude that it was only a remote possibility, but when it was combined with the other statements that you made, Mr. Heatherly, it indeed certainly must have upset and made it impossible to run the agency in an orderly way.

I find it rather unusual, Mr. Heatherly, for somebody to come into an agency and within a day fire, despite the fact that you do not find it unusual, and having considerable experience myself, to fire 6 of the 10 regional heads of an agency. I don't find that to be par for the course.

You noted that there was some argument with Senator Kerry, that the NFIB seems to differ with you on the conclusions of its activities. You said that the questions that were asked that all

lending activities be terminated—did the questions also include the loan guarantee provisions?

Mr. HEATHERLY. All lending activities.

Senator BOSCHWITZ. Let me restate it. In the questions that were asked by the NFIB of its members, were the things that were to be terminated include only direct lending or did it also specifically ask in a question whether the loan guarantee programs would be discontinued?

Mr. HEATHERLY. As I recall, Senator, the pro and con discussion and the background of what the members were voting on was not specifically limited to the direct loan program. It inferred that all lending programs were included.

Senator BOSCHWITZ. A loan guarantee program is not a lending program, Mr. Heatherly. Perhaps I should make that clear to you now that you have risen to the position of Acting Administrator of the SBA. [Laughter.]

It is a guarantee program. So let me ask you again with great specificity—far and away the largest program found in the SBA is the loan guarantee program. Perhaps one can infer that if you ask any questions about terminating a program of the SBA, that the largest program would be included in the thinking of the people who are answering, but since you said in your testimony before us "all lending activities were to be terminated," that was the NFIB question, I ask you again, was there a specific question with respect to the loan guarantee program?

Mr. HEATHERLY. No, Senator.

Senator BOSCHWITZ. So, therefore, the NFIB did not poll whether or not the largest of all programs would be discontinued?

I don't want to go beyond my time, Mr. Chairman. I state again to Mr. Heatherly that I supported many of the President's initiatives in this whole area. Very frankly, I was surprised that the chairman and the ranking minority member of this committee and others on both sides went as far as they did in reducing the budget outlays with respect to the Small Business Administration. I think that they, in an effort to balance the budget, made some very broad attempts to reduce the expenditures to be found in the SBA, most of which were associated with the direct loan programs and most of which programs were very large and now have been shrunk because of the activities of this chairman.

I led some battles here in this committee to shrink it even further and lost those battles and then accepted the loss. I would suggest to you, Mr. Heatherly, that from all of my experience that you simply can't go around in a light-hearted or in any other way saying that 50 percent of all employees will be terminated across the board in the event that we have our way of making this transition that you speak about.

You can't tell me that it's the interest groups who are creating the confusion. If you want to be a sophisticated head of an important agency, you can't make statements in a light-hearted way to the press—not that you can't treat them—you have to just treat them with certain professionalism that you speak of, that your employees are supposed to have in evaluating all this stuff that's been put out.

I would suggest to you that your activities thus far in the SBA really have gone a long way to undermine the effectiveness of that agency. Perhaps that's what you want to achieve. If you do, that would be a shame because it is an agency that has achieved a lot.

Clearly most businesses in this country have not relied on the SBA. I created about 50 businesses, and some of them did rely on the SBA. I franchised. Some of the franchisees did get SBA guarantees, I believe, as I recall. I never utilized it myself.

But this is an agency that is of importance to the Congress, and we are not going to see congressional intent frustrated or overcome by bureaucratic or administrative action.

So I would hope that you go back to the agency, Mr. Heatherly, and to rebuild what is left of it, because in my judgment your activities thus far must have severely undermined its ability to proceed.

The CHAIRMAN. I thank the distinguished Senator from Minnesota. I think that the importance of his remarks cannot be overestimated. You should know—and I'll be glad to say for the record—that in the markup sessions of this committee there was nobody that advocated the administration's position more vigorously than Senator Boschwitz. Indeed, I think it is safe to say that our relations cooled a little bit in the course of the behind-the-doors debate. So these remarks being made by him, I think, are particularly important in the sense that it gives you an idea of the difficulty that lies ahead.

But in case you didn't have any idea that there would be such difficulty, and before I turn the next question over to Senator Kasten, I just want to comment upon another one of your quotes where you said in the Washington Times, April 18, 1986, that you were hopeful that the President's proposal to eliminate the SBA would be referred to "more sympathetic committees." Just let me give you a brief lesson about the Senate rules.

Under rule 25 section (o)(1) of the Standing Rules of the U.S. Senate, the Senate Small Business Committee has an absolute, unqualified right to review all legislation directly affecting the SBA even if it goes first to another committee. This is unique among all the committees of the U.S. Senate. So the bill probably will initially go to the Senate Governmental Affairs Committee, but then I already have requested that it come to this committee.

Mr. HEATHERLY. I understand that, Senator. I was hopeful that we would——

The CHAIRMAN. What do you think the chances are that it's going to come out of this committee? [Laughter.]

You had one chance. You had Senator Boschwitz. As I said before, he supported that effort when it was part of a legitimate attempt—and, I might add, an open attempt—to reform the SBA Program, above board and on the table. He was supportive, and it was an honorable way as far as the administration was concerned, and this Senator, other members of this committee, and so forth, were concerned. We had it out.

What's going on here, as far as you're concerned, I think it's becoming very clear, it is not the constitutional process that you care to use. I repeat, you're trying to attempt—you're trying to accomplish de facto what you can't do by the law.

Mr. HEATHERLY. That's not true, Senator.

The CHAIRMAN. And this committee is not going to stand for that.

One brief question: How is it that your name—why wasn't your name sent up—Senator Boschwitz alluded to confirmation—why weren't you sent up for confirmation as a Small Business Administrator?

Mr. HEATHERLY. I would like to answer that, Senator, but first I want to point out that I have not done a single thing in the SBA to halt or to turn back or turn around or change any existing program that was in place when I came on board March 31. I have not canceled a single publication, report, symposium, conference, trade mission, or any other activity that was ongoing when I came on board March 31.

The CHAIRMAN. I'm not interested in what you didn't do. Have you raised morale?

Mr. HEATHERLY. Senator——

The CHAIRMAN. Have you raised morale? That was the essence of Senator Boschwitz' line of questioning. Have you raised morale?

Mr. HEATHERLY. Morale is a very important factor affecting the agency's operations. I have done what I could in terms of the communication to employees on April 2. Recognizing that my appointment was going to raise some controversy, I took the initiative as quickly as possible——

The CHAIRMAN. I'm not referring to the political appointees. I'm asking you, have you gone ahead and raised morale?

Mr. HEATHERLY. Well, Senator, I have not——

The CHAIRMAN. To tell everybody that 50 percent of them might not be here, does that raise morale?

Mr. HEATHERLY. Senator, would you prefer that they not find that out until something does happen; that they should not be aware of this until something actually happens?

The CHAIRMAN. I think SBA is well aware of the give-and-take that has occurred between the Congress and the President on this issue. Nobody needs you to——

Mr. HEATHERLY. Exactly; they were aware of it when I arrived.

The CHAIRMAN. It has been a difficult situation at best.

Mr. HEATHERLY. But, other than my action with regard to the six political appointees who serve at the pleasure of the Administrator or the Acting Administrator and at no one else's pleasure, I have not taken any actions that would have any effect on morale over there. As a matter of fact, I have gone out of my way to have meetings with all the senior staff to assure them of my support and that I expect them to carry out their responsibilities. And my door is always open when they have matters that need to be discussed with me.

The CHAIRMAN. Would you respond to the first part of the question as to why your name wasn't sent up to be the Administrator?

Mr. HEATHERLY. Senator, I was asked by the White House if I was interested in serving as Deputy Administrator and then becoming Acting Administrator when Mr. Sanders left. I was told that the White House did not intend to nominate an Administrator, but instead to have a Deputy Administrator serve as acting for

the time being, they asked if I would be interested in that job. I said, "Yes; I would."

The CHAIRMAN. Why?

Mr. HEATHERLY. You'll have to ask the White House why. That decision was made before I was offered the position. In other words, that was already the strategy before specific nominees were discussed.

The CHAIRMAN. Then it is the White House's position that the Small Business Administration is not deserving of an Administrator; is that correct?

Mr. HEATHERLY. You'll have to ask the White House to comment on that. I'm only relating to you what I was told and I'm not speculating on the reasons.

The CHAIRMAN. Senator Kasten.

Senator KASTEN. Mr. Heatherly, where have you been over the last couple—are you familiar with the discussion that Senator Boschwitz and the chairman just had in terms of the efforts that we went through, a number of us negotiating with the administration, with the chairman, with Senator Boschwitz, working to try to develop a compromise in which we, in effect, had a number of people signing off on it? Did you just miss all that? Was that not going——

Mr. HEATHERLY. No, Senator.

Senator KASTEN. Have you read about this? Have you seen it or have you read the papers? Are you aware?

Mr. HEATHERLY. I have read about it.

Senator KASTEN. How can you sit here and speak to us in the way everything that has been done with regard to working out these differences is, in effect, meaningless and that you somehow come in with representing a new or different group of people and know better than the committee and the Congress? Where are you coming from? Where are you getting these ideas? What makes you think that what you're saying makes any sense to anyone in this room?

Mr. HEATHERLY. The President sent up his budget on February 1 with the SBA proposal as part of the budget and has reiterated that support subsequently. When the administration asked me on my first day in office to send up the transfer bill, I did. I was simply carrying out administration policy. They wished to pursue this subject further, and wished to have a fair hearing on it. This year's bill is different, significantly different, from last year's bill. It's a transfer, not an abolition, and they wanted to have a fair hearing on this subject. I think that is all that is being suggested.

Senator KASTEN. I can't tell from this biography—have you ever worked in a business? I know you have worked for some think tanks and you've been part of a couple of different bureaucracies and did some work on the White House Commission on Fellowships. Have you ever worked for a business? Senator Boschwitz worked for a business. I used to be in the shoe manufacturing business. Others of us have worked for a business.

Have you ever gone to work and worked for a business and had people work for you and had to go through the problems of a business? You have not?

Mr. HEATHERLY. My parents had a——

Senator KASTEN. Basically have you been——

Mr. HEATHERLY [continuing]. Business for a while, but I have never been in business directly.

Senator KASTEN. So you got out of school, and I don't even know where you went to school—it doesn't make any difference—then you went to work for what, a think tank or a bureaucracy or a government? Where are you coming from?

Mr. HEATHERLY. A private foundation.

Senator KASTEN. For a foundation. And then after that foundation—that first foundation was Heritage or did you start with——

Mr. HEATHERLY. No, that was the Intercollegiate Studies Institute, which is a foundation to promote the free enterprise system and free market economics.

Senator KASTEN. All right.

Mr. HEATHERLY. I worked for it for 6 years. Then I went to the——

Senator KASTEN. So you have been writing papers. Your background is writing papers and developing ideas and strategies. Have you ever run for anything, like have you ever run for sheriff, put your name on the ballot?

Mr. HEATHERLY. Never even had the itch to run for sheriff, Senator. [Laughter.]

Senator KASTEN. How about anything else? I'm trying to get a sense in terms of we represent—this is a representative system of Government. You're talking about NFIB, a representative ballot, mandate, whatever. I believe I have the highest voting record of any Member of the Senate in terms of NFIB records for the last year, maybe for the last 2 years, in Congress, and I have worked very closely with a number of people, not only the people here in Washington that evidently you don't trust anymore—I haven't asked them about you—but the people back home. I'm in close touch with those people, the people that are filling out those mandates, that have that mandate piled up with all the other junk next to the cash register. On Sunday afternoon they somehow find time to clean it up and mail out the forms to the bureaucrats, check off the mandates, and go through and then go out to try to relax a little bit on Saturday night.

Now you've never run for anything? You've never put your name on a ballot or been out there trying to ask people to vote for you?

Mr. HEATHERLY. I admire people who run for office and do it successfully, but I have never had that itch myself, Senator.

Senator KASTEN. Coming through to at least one member of this committee, there is a little bit of contempt for us, saying that we've got to get this issue somewhere other than a small business committee; that somehow, coming through the kind of—I don't want to characterize your comments as being smug or sarcastic or whatever, but there's a little sense here in terms of you're an advocate of small business and you're sitting here kind of saying, well, that's not what's meant by this and that. We're not communicating very well, I guess.

It would seem to me that you could serve your interests, your goals of trying to streamline this agency and ours—and we struggled through this business with Senator Boschwitz, Senator Weicker, a number of us who have been working not only in this

committee, but on the Budget Committee and on the Appropriations Committee, and we have dealt with things like, could we concentrate more on the guaranteed loans and maybe do much less, maybe eliminate the direct loans or could we make a case of doing much more through a shortcutted guarantee program, as we are now successfully doing with certain banks in Wisconsin and other cases, and allow them to do more of the bookwork and more of the bureaucracy and more of the checking off, and we've got a streamlined system now in certain cases for guaranteed loans.

Now those kinds of steps are important steps——

Mr. HEATHERLY. Yes.

Senator KASTEN [continuing]. But it seems to me you're not going to be able to do even those important steps if you begin by saying, No. 1, the NFIB and the people out there aren't too helpful and really don't understand the real goal here and, No. 2, that those of us who are elected to serve somehow don't know what we're talking about or are responding to special interests, and, No. 3, that this whole process somehow—you get ideas from somewhere that are more important than any that have been developed in this whole consensus.

Couldn't you do a better job reaching your goal by saying let's look and work for what we can really do rather than taking a position out here that clearly is unacceptable to everyone in the room?

Mr. HEATHERLY. I think, Senator, that the problem here is that I am advocating a position which perhaps the majority of this committee, perhaps all the members of this committee, feel should not have been advocated this year because you thought it had been settled and sealed for at least 3 years by last year's process. That was not the view of the White House. That was not the view of the President nor the view of OMB, or this proposal would not have been submitted and I would not have been asked to come and try to advocate the proposal one more time in a revised form.

I certainly have the greatest respect for the members of the committee who have made significant progress in streamlining SBA. In the Reconciliation Act, the reauthorization contains many features which the administration wanted which are important improvements, and we will implement them conscientiously.

I have made no inferences at all with regard to the importance of what you're doing. I'm merely saying that there is an additional item on the agenda that we would like to have a hearing for. We were not optimistic that this committee is going to receive or even offer a hearing on this transfer bill. Am I mistaken?

The CHAIRMAN. I believe your bill—first of all, how many sponsors have you got for your bill? Excuse me. How many sponsors have you got for your bill? Has it been introduced? Has the bill been introduced?

Mr. HEATHERLY. It has 22 cosponsors in the other body. We are still discussing sponsorship with interested parties in this body.

The CHAIRMAN. In other words, you don't have even a sponsor yet in the U.S. Senate for your bill?

Mr. HEATHERLY. We have——

The CHAIRMAN. Why are you asking us the question? You haven't even introduced—have you introduced the bill in the

United States Senate? Have you introduced the bill into the U. S. Senate?

Mr. HEATHERLY. We are discussing it with interested parties and we expect to have a sponsor very shortly.

The CHAIRMAN. I'm going to have the report read back to you, in other words, as to whether or not we would give a hearing, et cetera. We haven't even been offered a piece of legislation.

Mr. HEATHERLY. If the bill has a sponsor, will you offer hearings?

The CHAIRMAN. The answer is it will then be referred not by my choice—it will be referred to the Senate Governmental Affairs Committee which has jurisdiction over all Government reorganization legislation. At that juncture, once introduced, as I have already indicated to you, I will make a request that it be referred to this committee. Would I have a hearing on it? Of course I'd have a hearing on it. I would be glad to have a hearing on it. I think the more we hear about this, the more ridiculous these proposals from the administration become. I'm delighted to have hearings. The more people that they send up here, whether it's Stockman or you or anybody else—you have pulled together, Mr. Heatherly, the small business community as no one has ever pulled together the small business community. [Laughter.]

Believe me—believe me—last year there was considerable support in the Small Business Committee for the proposals of the administration, and much of the small business community—FNIB included—eventually sided with the President on this issue. This year everybody is together. It's an experience I've never had in my lifetime—everybody's on my side. [Laughter.]

I don't understand that with my own party; I'm not used to it. I don't understand it, but it's true. And do you know who's done that? You. [Laughter.]

Senator BOSCHWITZ. Well, it's not all bad. We even have TV here now. [Laughter.]

The CHAIRMAN. When it comes to Senate procedure, though, in response to the question that you asked; the answer is, of course, we will have a hearing when it comes over here. But in the meantime, I suggest you'd better find 1 sponsor out of 100 Senators for your bill. You might get one. At that stage, Senator Roth's committee, Government Operations, will receive the bill, at which point I will request that the bill come over here.

That brings me just to the one point that I care to make in this matter—as to why you're spending any time on this proposal when, indeed, we're in a budget process now which involves us, OMB, and the administration. This doesn't require any time on your part. Right now you should be carrying out the law in all of its respects vigorously.

Mr. HEATHERLY. We are doing that.

The CHAIRMAN. With outreach—with outreach. No, you're not. I don't have the time today to go through the number of programs, but in effect, you're saying to everybody out there don't take any more applications after such and such a date or let's not have a pooling of certificates as far as the SBIC's are concerned. You're trying to close this thing down in case—in case——

Mr. HEATHERLY. No, Senator.

The CHAIRMAN. Well, I'll eliminate the in case for you. There might be some change here in the Senate, but there is not going to be any change insofar as fiscal year 1987 is concerned. Now will you please get to work on the rest of your job?

Mr. HEATHERLY. Those directives that were sent out to the field on application deadlines were all issued by my predecessor, Mr. Sanders. I have not issued any changes.

The CHAIRMAN. Who was carrying out the President's proposals? Right?

Mr. HEATHERLY. In terms of the application deadlines which would affect the fiscal year 1987 funding, those decisions were made not by me, but by my predecessor.

The CHAIRMAN. Correct.

Mr. HEATHERLY. I have not made any changes in those precipitously. I'm still reviewing them.

The CHAIRMAN. Senator Kasten.

Senator KASTEN. Let me just conclude, Mr. Chairman, by saying I really—I'm not in any way trying to tell you that your goal might be ideally right or wrong; I happen to disagree with it. But if your goal is to get part of the things—I think you would agree that the guaranteed loan program, for example, is one that can be made more—that we can do it in a more streamlined way. What we're doing with a few institutions right now we could do with more and rely more on the private sector and more on the private bankers and less on the SBA bureaucrats and save money and time and do the job better. We would probably agree on that point.

Now if we do agree on that point, you're missing the opportunity, because there are other examples like that of where we can do the work, by kind of coming in and saying the whole operation's got to be thrown out and some of it is going to be shuffled into Commerce. People are immediately worried about the advocacy, the representation, that whole kind of issue.

I would just hope that you would, after you get through a couple of rounds of hearings like this which I guess you're going to go through, say, OK, let's make some real changes. Otherwise, we're going to end up without any changes and you're not going to be able to reach any of the goals, and the community that you're trying to serve is not going to be well served. Not only are the people that are now working for the Small Business Administration going to be confused and distracted, but many of the people who are now being served by the small business community are going to be confused and distracted, but most importantly that entrepreneur out there today who is maybe working for a large company and is sitting home tonight with his wife saying, "Do you think we should take a chance? I'll quit my job and I'll start with this little idea. Could we get an SBA loan and maybe start it in our garage?"—he's going to say, "Gosh, I'd better stay working for the giant I'm working for and burying my ambitions because there probably won't be an SBA loan and I don't have anybody out there helping me."

So we lose with the people working for the SBA; we lose for the people that are now applying to the SBA; we lose for that young man or woman that might take that jump today and go out on his or her own. All we get is a lot of kind of controversy and pizzazz in

front of a few television cameras, and your name becomes a little bit more well known than it was 6 months ago.

But the overall goal, I think it's a lose, lose, lose situation. Some of us try to find win-win situations, and I would hope that you, working with this committee, could work for a couple of wins as opposed to what I look at as a very great loss.

Thank you, Mr. Chairman.

Mr. HEATHERLY. I think undoubtedly there are many areas of possible agreement between us that we can work on.

The CHAIRMAN. You might have misspoken in an earlier response to my question about putting matters on hold vis-a-vis the outcome of the President's and your proposals. You were saying these matters related to the former Administrator. I have a memorandum dated April 17 to Charles Heatherly from Edwin Holloway relative to recommendations for implementing 99-272 with respect to the SBIC Program.

I quote, on page three,

> Authority to issue certificates. SBA will not use the authority to issue trust certificates during fiscal year 1986 and will await the outcome of the congressional action of the President's fiscal year 1987 budget proposal.

So certain matters are on hold right now; is that correct?

Mr. HEATHERLY. Well, that was Mr. Holloway's recommendation based upon our General Counsel's reading of the authorization which permits us to do certain things but doesn't mandate us to do them. That's still under review, Senator. I haven't made a final decision about that.

The CHAIRMAN. Well, but on the next page it's confirmed with your signature underneath.

Mr. HEATHERLY. That was his recommendation based upon the General Counsel's——

The CHAIRMAN. I understand, but it says confirmed and then you signed it.

Mr. HEATHERLY. We are going to put in place regulations to permit us to do the pooling.

The CHAIRMAN. "SBA will not use the authority to issue trust certificates during fiscal year 1986 and will await the outcome of congressional action on the President's fiscal year 1987 budget proposal."

"Confirmed," signed, Charles Heatherly.

Mr. HEATHERLY. But those pooling certificates are not mandated by the law, Senator.

The CHAIRMAN. I understand that. That's a different issue. But you confirmed this?

Mr. HEATHERLY. Yes, Senator.

The CHAIRMAN. Then you misspoke in your earlier response.

[Material follows:]

U.S. SMALL BUSINESS ADMINISTRATION
WASHINGTON, D.C. 20416

DATE : APR 17 1986

TO : Charles L. Heatherly
Acting Administrator

FROM : Edwin T. Holloway
Associate Administrator
for Finance and Investment

SUBJECT: Recommendations for Implementing PL 99-272
with respect to the the SBIC Program

Statement of the Problem

The President approved Public Law 99-272, the FY 1986 Budget Reconciliation Act (Budget Act) on April 7, 1986. That Budget Act essentially did four things that have substantial impact on SBA with respect to the SBIC program as follows.

(1) The Budget Act gives the SBIC program three years of budget authorization: FY 1986-$250.0 million; and,
FY 1987-$261.0 million; and,
FY 1988-$272.0 million.

(2) The Budget Act removes the authority of the Federal Financing Bank (FFB) to purchase SBA-Guaranteed SBIC Debentures.

(3) The Budget Act authorizes SBA to issue and fully guaranty trust certificates backed by pools or trusts composed of SBA-Guaranteed SBIC Debentures.

(4) The Budget Act requires the SBA within 60 days of the effective date of the Budget Act to promulgate regulations implementing a central registration function for the issuance of the trust certificates, and to contract with a third party for the provision of central registration services pursuant to those regulations (should SBA elect to use the authority as in (3) above).

SBA Policy on Implementing and Reacting to the Budget Act

Based upon meetings with the OMB, our meeting with you on Thursday, April 10, 1986, and discussions with the Associate Deputy Administrator (Mr. Turnbull), it is our understanding that the SBA's policies on the Budget Act elements are as follows.

(1) Budget Authority -- SBA will execute the FY 1986 budget authority pursuant to the FY 1986 appropriations act. For FY 1987 and FY 1988, the SBA will await Congressional action on appropriations for those years but plan and prepare for the possibility of Congressional acceptance of the President's proposed FY 1987 Budget.

(2) Removal of FFB Authority -- Consistent with the policy as in (1) above, the SBA will use its present authorities as contained in the Small Business Investment Act of 1958, as amended, and the present SBA Regulations to facilitate financing for SBICs, in the private capital markets to replace the financing mechanism of the FFB which is no longer available. This procedure will begin immediately and continue through September 30, 1986, in order to utilize the FY 1986 authority and appropriations as required by law.

(3) Authority to Issue Certificates -- SBA will not use the authority to issue trust certificates during FY 1986, and will await the outcome of Congressional action of the President's FY 1987 Budget proposal.

(4) Central Registration Regulations and Services -- SBA will comply with the Budget Act's requirements to publish within 60 days regulations implementing the central registration function, and within the same time period will contract for third party services to provide central registration services should SBA use its authority to issue certificates subsequent to September 30, 1986.

Purpose of This Memorandum

By this memorandum your confirmation of the above policies is hereby requested in order to enable SBA to begin taking the steps necessary to carry out these policies. For your information, attached as an addendum hereto are lists of steps that must be taken in order to proceed.

Please indicate your confirmation of these policies, or any changes and comments which you may have to these policies and actions.

Edwin T. Holloway
Associate Administrator for
Finance and Investment

Confirmed _____ Date: 4-23-66

Not-Confirmed _____ Date: _____

Changes and Comments

Steps Necessary To Find SBIC Private Sector Financing

(1) Establish procedure with U.S. Treasury for rate clearance.

(2) Revise SBA servicing procedures as necessary to facilitate multiple holder sales.

(3) Negotiate with potential sources of funds on terms, conditions, rates, and timing of financing.

(4) Change documentation (Debenture, Guaranty Agreement) to reflect terms and conditions of proposed transaction(s).

(5) Get legal opinion from General Counsel for transaction(s).

(6) Write instructions for SBICs applying for funds under the revised mechanism.

(7) Assemble and mail funding kits for SBICs.

(8) Receive and process applications and approve (or deny).

(9) Assemble approved applications for offering to investors/lenders.

(10) Offer debentures and sign purchase agreement (if necessary).

(11) Close the transaction(s) by issuing guarantee agreement(s) against payment for debentures.

Steps necessary to issue central registration regulations and to contract for those services with third parties

A. Issue Central Registration Regulations

(1) Draft regulations prepared by Office of General Counsel.

(2) Clearance of draft regulations with SBIC program personnel.

(3) Meet with Congressional committee staff and advise them of content of proposed regulations.

(4) Get preliminary clearance from OMB.

(5) Prepare regulation in final form incorporating changes suggested in clearance process (if any).

(6) Clear final regulation through SBA and OMB.

(7) Publish final regulation.

B. Contract for Central Registration Services

(1) Prepare detailed specifications of services to be provided by contract.

(2) Develop criteria for selecting entities submitting proposals.

(3) Publish notice in Commerce Business Daily of SBA's intent to contract for central registration services, and soliciting indications of interest.

(4) Mail regulations, specifications, and criteria to entities indicating interest.

(5) Evaluate definitive proposals received for compliance with specifications, and for capacity to perform based upon criteria.

(6) Select best proposals and proponents.

(7) Negotiate and sign contract with winning proponent.

The CHAIRMAN. Senator Baucus.

Mr. HEATHERLY. I don't think so, Senator. There's nothing that has been mandated that we have put on hold.

The CHAIRMAN. Senator Baucus.

Senator BAUCUS. Mr. Heatherly, what discussions or memos are there as to how the SBA will go through with its proposed transfer?

Mr. HEATHERLY. Very preliminary in-house estimates about various scenarios.

Senator BAUCUS. Could you outline those discussions and those memos that go to the point of putting this transfer into effect?

Mr. HEATHERLY. Senator, I have not had a discussion with our analytical staff or our personnel staff to look at the working papers that they had been working on prior to my arrival in terms of what would happen under various possible scenarios. I am not familiar with those plans, Senator.

Senator BAUCUS. All right. Just tell me what you know about those plans, obviously you have had some discussions with some personnel, the White House, somewhere in the administration, about this. I would like you to tell us the nature of those discussions; that is, how you're going to treat this committee, the Hill, and also the nature of discussions as to how long before you're going to put this, the transfer, into effect.

Mr. HEATHERLY. The principal discussions that I have had with my staff have been with regard to the impact of the proposal on field structure. That's where most of our staff are. That's where the small business people live who relate to our district offices, where the loans are administered. So I'm very concerned about what happens to our field structure if the proposal were to be enacted.

Senator BAUCUS. So there are proposals, there are plans for putting——

Mr. HEATHERLY. Not plans and proposals. There are discussions about how we make the best possible fit in terms of maintaining a field structure that could carryout the programs that will be continuing.

Senator BAUCUS. Assuming the proposal goes into effect?

Mr. HEATHERLY. That's right. It's all hypothetical.

Senator BAUCUS. It's a semantic question. It does sound like there are very definitely written plans and proposals that contemplate, at the very least, the transfer being placed in effect.

Another question I have is—how——

Senator BOSCHWITZ. If you would yield for a moment——

Senator BAUCUS. Yes.

Senator BOSCHWITZ. Would you answer the question—that there are proposals that have been written down? Did I just hear that you said no to that? There are not proposals of how to go forward and to act in the event that the President's desires of closing the agency or transferring the agency are concluded? You have not made——

Mr. HEATHERLY. I have not seen any detailed proposal on how we implement that. There may be some estimates on the FTE side how various offices might be affected because that's in the President's budget.

Senator BAUCUS. Would you describe this memo? I have a memo here. It's dated April 7 of this year. It's to Ed Holloway. Its subject is "Milestones"—"Milestones" is in quotation marks—"contemplated for orderly phaseout of all five programs as of September 30, 1986 (long version)."

What is this memorandum? Do you know? Are you aware of this memorandum?

Mr. HEATHERLY. I think I've seen it. The first milestone is——

Senator BAUCUS. It's also signed by a Denny Gibb, Director of the Office of Financial Institutions.

Mr. HEATHERLY. Yes.

Senator BAUCUS. Are you aware of this memo?

Mr. HEATHERLY. Yes, sir. Yes, Senator.

The first milestone is a June date, I recollect.

Senator BAUCUS. So there are written memoranda. At least we know of a written memorandum that contemplates the phaseout?

Mr. HEATHERLY. That's not planned for a phaseout. It's saying that——

Senator BAUCUS. Orderly phaseout of OFI programs as of September 30.

Mr. HEATHERLY. That's saying that if there is a phaseout, certain things have to happen by certain dates. If certain decisions are not made by the Congress, then we cannot proceed within those milestones.

Senator BAUCUS. Would you provide this committee all memoranda that have anything to do, directly or indirectly, with the proposed transfer?

Mr. HEATHERLY. Yes, Senator.

[Subsequent information was received and follows:]

62-302 0 - 86 - 4

U.S. SMALL BUSINESS ADMINISTRATION
WASHINGTON, D.C. 20416

Date: APR 07 1986

To: Edwin T. Holloway
AA/P&I

Thru: Edward J. Myerson
DAA/P&I

From: OPI/GIBB

Subject: "Milestones" Contemplated for Orderly Phase-Out of OPI Programs as of September 30, 1986 (short version)

June 1

(1) Notify all field offices that no additional NBL applications will be accepted for Central Office decision after July 1.

(2) Change SBLC Regs to eliminate "SBA loan only" restriction by 9-30. Change is needed to enable SBLCs to continue to service/liquidate their existing portfolio.

August 1

(1) Notify all field offices that (a) no additional CLP designations are to be made after September 1 and, (b) that no additional PLP nominations will be accepted after September 1.

(2) Instruct all field offices: (a) to notify their CLP lenders that no additional Regular 7(a) loan guaranty applications will be accepted after September 1 and, (b) no additional CLP-processed loan guaranty applications will be accepted after September 15.

(3) Instruct all field offices to notify their PLP lenders (a) of item (2), above, (b) no PLP-processed loans are to be approved after September 15, and (c) SBA's local offices will need to be in receipt, by September 22, of Forms 4 and 4-I sets for all PLP-approved loans.

September 1

Notify all participant lenders that:

(1) Loan-making stops as of September 30, 1986.

(2) Lenders' contractual obligations for prudent loan administration are not obviated.

(3) Lenders will be given guidance as to how (and with whom) they are to interact <u>after</u> September 30, vis-a-vis SBA loans.

<u>September 30</u>

Send Administrator's letter of appreciation to all SBA participant lenders. Clearly, this is <u>optional</u>.

Danny J. Gibb

Danny J. Gibb, Director
Office of Financial Institutions

U.S. SMALL BUSINESS ADMINISTRATION
WASHINGTON, D.C. 20416

Date APR 07 1986

To Edwin T. Holloway
AA/F&I

Thru: Edward J. Myerson
DAA/F&I

From OFI/GIBB

Subject "Milestones" Contemplated for Orderly Phase-Out of OFI Programs as of September 30, 1986 (long version)

This is provided as requested by Mr. Myerson on April 2.

Our program activities affected by the loan program elimination proposal are: Certified Lenders, Preferred Lenders and the two classes of non-banking institutions (Non-Bank Lenders and the Small Business Lending Companies). These program activities all relate to the Agency's overall Business Loan Program, so the "milestones" set forth in Everett Shell's similar paper for the Office of Business Loans are the base for this paper. I have not herein repeated Mr. Shell's presentation; rather, this paper deals with how OBL's "milestones" are amended for OFI's purposes.

OFI "Milestones"

June 1

(1) Notify all field offices that no additional applications from interested financial institutions for our approval to become a participant lender (Non-Bank Lender) will be accepted for Central Office decision after July 1.

(2) Publish in the Federal Register a proposed amendment to 13 C.F.R., Section 120.302-1(a) [relative to the 16 Small Business Lending Companies] which now states, "(a) Business Purposes. Be a corporation (profit or non-profit) engaged solely in the making of loans under Section 7(a) [except Section 7(a)(13)] of the Act in participation with SBA." Have this restriction eliminated by September 30.

Since the 16 SBLCs are presently restricted by SBA's regulations to being sole purpose organizations, i.e., only allowed to engage in the business loan guaranty program of the SBA, it is crucial that SBA eliminate this restriction if our loan program is to be eliminated by October 1, 1986. If we do not do this, these 16 financial institutions will effectively be put out of business as of October 1, also. It is not in the Government's best interest to do so, since these institutions' continued existence (which is

possible only if they can remain financially viable organizations) is needed, if for no other reason than the fact that we need them to continue to service/liquidate their existing SBA loan portfolios. As of December 31, 1985, this total portfolio included 3,084 loan approvals worth $540,803,874 (gross), and that portfolio continues to grow.

August 1

(1) Notify all field offices that no additional CLP designations are to be made after September 1.

(2) Notify all field offices that no additional PLP nominations will be accepted for final decision-making by Central Office after September 1.

(3) Instruct all field offices to notify their CLP lenders that:

(a) No additional Regular 7(a) loan guaranty applications will be accepted after September 1.

(b) No additional CLP-processed loan guaranty applications will be accepted after September 15.

(4) Instruct all field offices to notify their PLP lenders of the deadlines in (3)(a) and (b), above, and also let them know that:

(a) No PLP-processed loans are to be approved after September 15.

(b) SBA's local offices will need to be in receipt, by September 22, of the lender's loan documents (Forms 4 and 4-I set) for every PLP-processed loan approval. The local offices, then, will need to ensure that the Regional and Central Offices are in receipt of their copies of these documents by September 26.

September 1

Notify all participant lenders (those having current Form 750 on file with SBA) that:

(a) The SBA's business loan guaranty program (as to loan-making) is out of business as of September 30, 1986.

(b) With regard to the loans outstanding in the portfolio as of September 30, stress to the lenders that their contractual (Form 750, 1186 and/or 1347) obligations for the prudent administration of their outstanding SBA loans are not obviated by the September 30 shut-down of the loan-making functions.

(c) In conjunction with Portfolio Management, assist in providing all SBA participant lenders with adequate guidance as to how (and with whom) they are to interact after September 30, in terms of administering their existing SBA loan guaranty portfolio.

September 30

Send Administrator's letter to all SBA participant lenders, thanking them for their loan guaranty participation and support of this Administration's commitment to achieving better quality lending practices and results. Obviously, this item is optional.

Danny J. Gibb

Danny J. Gibb
Director
Office of Financial Institutions

U.S. SMALL BUSINESS ADMINISTRATION
WASHINGTON, D.C. 20416

Date APR 07 1986

To Edwin T. Holloway
AA/F&I

Thru: Edward J. Myerson
DAA/F&I

From OFI/GIBB

Subject "Milestones" Contemplated for Orderly Phase-Out of OFI Programs as of September 30, 1986 (short version)

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(3) Instruct all field offices to notify their PLP lenders (a) of item (2), above, (b) no PLP-processed loans are to be approved after September 15, and (c) SBA's local offices will need to be in receipt, by September 22, of Forms 4 and 4-I sets for all PLP-approved loans.

September 1

Notify all participant lenders that:

(1) Loan-making stops as of September 30, 1986.

(2) Lenders' contractual obligations for prudent loan administration are not obviated.

(3) Lenders will be given guidance as to how (and with whom) they are to interact <u>after</u> September 30, vis-a-vis SBA loans.

<u>September 30</u>

Send Administrator's letter of appreciation to all SBA participant lenders. Clearly, this is <u>optional</u>.

Danny J. Gibb

Danny J. Gibb, Director
Office of Financial Institutions

CORRESPONDENCE DIGEST OR MEMORANDUM

TO: X The Administrator

Deputy Administrator

Date: MAY 7 1986 DRAFT

From: Director of Personnel

Subject: SBA Outplacement Assistance Program

Summary:

The first meeting of the Executive Outplacement Assistance Committee was held on April 22, 1986. Committee members' discussions regarding the nature of the program and the means and extent of implementation were augmented by presentations by individuals currently involved in federal outplacement programs at the Office of Personnel Management and the Department of Housing and Urban Development. The key issue discussed by the Committee which requires a decision concerned the appropriate time to initiate certain elements of the outplacement assistance efforts on behalf of Small Business Administration (SBA) employees. The Outplacement Assistance Program is planned and established on the assumption that a significant reduction is likely to take place in the SBA during calendar year 1986, whether because of implementation of the Administration's FY 1987 budget proposal; further reductions under Gramm-Rudman-Hollings, and/or because of some other action or agreement which has not yet been developed or approved. A good, effective outplacement assistance program requires significant lead time and it is necessary and in the best interest of our employees that we proceed now in order to insure we are prepared to provide appropriate and effective assistance when and if needed.

SURNAME AND ORGANIZATION	PREPARED BY	CLEARED BY	CLEARED BY
OPS	OP EXT	HCARVER	PWEIBER
INITIALS AND DATE			

CONTROL NO. _____

CLEARED BY	CLEARED BY	CLEARED BY	CLEARED BY	CLEARED BY	CLEARED BY	CLEARED BY
				EXECUTIVE SECRETARIAT	ASSOCIATE DEPUTY ADMINISTRATOR	DEPUTY ADMINISTRATOR

ACTION COMPLETED. (SIGNATURE) DATE

SBA FORM 606 (5-81) REF: SOP 9021 PREVIOUS EDITIONS ARE OBSOLETE GPO 640-824

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The assistance offered is divided into two basic parts: pre-retirement planning and job search preparation. Also needed to carry this out is training of Outplacement Assistance Coordinators (in the field and in Central Office) and the establishment of Outplacement Assistance Centers. The pre-retirement training and job search preparation skills training will be coordinated with the aid of a contractor yet to be selected. A further description of the Outplacement Assistance program is enclosed.

It was the recommendation of the Committee that, after a contractor is selected, we proceed to train the Outplacement Assistance Coordinators and to conduct the pre-retirement training, but that the physical establishment of Outplacement Assistance Centers and scheduling of job search preparation skills training would be premature at this time. Rather, for the latter two actions, it was recommended that they be deferred until more definite information is available on specific reductions which must be achieved. This approach will permit us to have plans in place and a contractor selected and on a stand-by basis. It will also help alleviate concerns of some managers about encouraging the loss of good employees too soon, and will provide better assurance that when job search preparation training does begin, it will be conducted for the employees who need the assistance and in the locations where it is needed.

Richard L. Osbourn

Enclosures

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1. RECOMMENDATION: Proceed on the enclosed Schedule of Events and Timetable (Appendix A) through Step 17, to include training of Outplacement Assistance Coordinators and conduct of pre-retirement training.

Approved:_____
Disapproved:_____
Date:_____

2. RECOMMENDATION: Physical establishment of Outplacement Assistance Centers and scheduling of job search preparation training be deferred until more definite information is available as to what specific reductions must be achieved.

Approved:_____
Disapproved:_____
Date:_____

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SBA's Outplacement Assistance Program

I. Objective:

The Agency's Outplacement Assistance Program will assist employees in:

- developing and applying successful job search strategies;
- marketing their skills, including preparation of resumes, SF-171s, and cover letters;
- developing interviewing skills;
- making difficult career decisions;
- obtaining employee counseling and assistance;
- identifying skills enhancement training resources;
- pre-retirement planning and counseling; and
- exploring entrepreneurial opportunities.

II. Methodology:

The Small Business Administration Outplacement Assistance Program includes a multi-faceted approach which will utilize a variety of resources both internal and external to the Agency. The diversification of resources should provide a balance of skills and abilities available from within the Agency along with those more effectively provided from the outside. The program will focus on (1) training of employees nationwide in job search skills (resume and SF-171 writing; interview skills); (2) assisting employees in developing job leads in federal, state and local government and the private sector; (3) providing pre-retirement planning and counseling; and (4) exploring entrepreneurial opportunities.

Specifically, a contractor will provide onsite training in writing resumes, SF-171's and interviewing skills and other job search preparation activities to include identification of positions in the private sector similar to Agency positions as well as retirement planning and counseling. At a minimum this training will be provided in the Central Office, all ten Regions plus District Offices where there is a large workforce (e.g. Los Angeles, Puerto Rico). Employees outside their respective regional office city will be allowed to travel to the regions for training unless there is sufficient interest to support a full class at that location. The training will be supplemented with video tapes of the exercises for use by employees who could not attend or did not desire to attend. Agency Outplacement assistance efforts will be coordinated from Central Office and conducted through internal resources both in Central Office and regional offices.

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Such efforts will include maintenance of an up-to-date listing of vacancies in the Federal as well as state and local governments. Further, local Agency Outplacement Assistance coordinators will develop and cultivate personal contacts in these target organizations to assure timely and desirable data regarding the hiring plans of that organization. Coordinators will provide for personal counseling on a broad range of issues of interest to employees. Additionally, they will be responsible for establishing and maintaining a resource library in current and useable condition.

As one tool in aiding employees to find positions in the private sector, SBA's Outplacement Assistance Center personnel will offer resumes to professional recruiters who will utilize pre-existing networks in an attempt to place employees where a particular background meets known vacancy specifications. No fee should accrue to the Small Business Administration since recruiters are paid by prospective employers. This provides us with specialized marketing talent at no cost.

III. TABLE OF MAJOR RESPONSIBILITIES

In House	Contractor
- Register employees in OPM Placement Assistance Program	- Publicize Training Program
- Register employees in SBA Outplacement Assistance Program	- Identify positions in the private sector similar to Agency where employees skills would be marketable.
- Locate jobs opportunities positions in both state and local government, other Federal agencies, and private sector	- Conduct training in developing and applying successful job search strategies.
- Market employee skills	- Conduct pre-retirement training and counseling.
- Staff Outplacement Assistance Centers	- Develop interviewing skills.
- Counsel employees	- Instruct on preparation of SF-171's and resumes and cover letters.

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In House	Contractor
- Compute benefits	
- Provide coordinated Unemployment Compensation Registration	- Train Outplacement Staff and maintain contact through meetings and conference calls
- Implement shut-down activities	
- Accelerate transfer clearances	
- Register employees in SBA contractor training program.	

IV. Outplacement Assistance Center

The sites for the Outplacement Assistance Centers will be located in Central Office, each Regional Office city, and possibly in some District Offices and would ideally be located outside of the Personnel Office.

It should include at a minimum:

. Multiple Job listings
. Outplacement Material
. Typewriters
. Blank SF-171's
. Duplicating Machine
. Blank Paper
. Pens/Pencils/Staplers
. Local Newspapers
. Selected Periodicals
. Selected FPM's
. Brochures
. Selected Forms
. Telephones

V. Organization for the Outplacement Assistance Program:

1. Executive Outplacement Assistance Committee:

The Executive Committee will serve in an advisory role to the Outplacement Assistance Operations Group and will be responsible for monitoring the progress made by SBA's Outplacement Assistance program. It will also encourage full support of all Agency managers in the outplacement effort to identify job opportunities and favorable placements.

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2. Outplacement Assistance Operations Group:

The Outplacement Assistance Operations Group is divided into three primary functions. (1) Total program direction; (2) Contractor oversight (training). (3) Outplacement operations oversight agencywide and implementation in Central Office. A senior personnelist will be responsible for each function.

The following individuals will be used on either an ongoing or an ad hoc basis and are identified as resources necessary to carry out the Outplacement Assistance Program:

ARA/A's or RPO's representing each regional office
Personnelist representing each Disaster Assistance Office (DAO)
Additional regional employees per location
Employment Policy Team Leader
Special Assistant to the Comptroller
Labor Management Relations Officer
Employee Relations Specialist(s)
Personnel Staffing Specialist(s)
Staffing Assistant(s)
Clerk-Typist(s)
Employee Development Specialist(s)
Payroll Office Representative(s)
Equal Opportunity Specialist(s) (Employment)
Administrative Services employee(s)
Administrative Officers (District Office)

Duties:

Duties accruing to the SBA Outplacement Assistance Operations Group shall include:

- monitoring Outplacement Assistance Contract(s) (e.g., training in job search skills, pre-retirement planning, etc.);
- employee counseling regarding severance pay, reemployment, annuities, leave, lump sum annual leave payment, unemployment compensation, etc.;
- systematic outplacement to other Federal agencies, state and local governments and private industry to include development of specific job leads for employees in both public and private sector;
- monitoring performance of all Outplacement Assistance efforts in all field locations;

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- providing assistance in registering for OPM placement assistance programs;
- managing the Resources Library;
- providing articles and updates periodically to the SBA Update and Network regarding outplacement activities;
- staffing Outplacement Assistance Centers (locations to be determined);
- providing frequent status reports to the Executive Committee to include the following statistics:

  number of employees requesting to be outplaced;
  number of employees registered in contractor's program;
  number of referrals made to all organizations;
  number of placements made;
  amount of severance pay obligated;
  number of retirements or quits.

APPENDIX A

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SCHEDULE OF EVENTS & TIMETABLE

	Activity	Target Date	
1.	(a) SBA Form 2 approved (DOP, ADA/M&A, and Comptroller)	3/14	
	(b) Statement of work sent to OPGM	3/14	
2.	Synopsized and published in Commerce Business Daily	~~3/25~~	4/1
3.	RFP released	4/14	
4.	Criteria for evaluating RFP developed	~~4/28~~	4/1
5.	Interim items completed	3/25 - 6/6	
	(a) Visits to other Outplacement Centers made (both public and private sector)	done	
	(b) Space for Outplacement Centers identified and logistics completed	to be determined	
	(c) Training sites identified and arrangements made to facilitate session	to be determined	
	(d) Outplacement materials ordered, printed, etc.	to be determined	
6.	Proposals due	5/14	
7.	Proposals evaluated	5/22	
8.	Contract awarded	~~5/29~~	6/6
9.	First meeting between contractor and Project Officer	~~5/30~~	6/9
10.	Training and program materials including outline and curriculum, delivered to Project Officer	~~6/6~~	6/13

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11. Proposed publicity material and public relations activities delivered to Project Officer	~~6/6~~	6/13
12. Resource bibliography delivered to Project Officer	~~6/10~~	6/17
13. Training materials approved	~~6/10~~	6/17
14. Publicity for training sessions begin	~~6/12~~	6/19
15. Meetings/conference calls conducted between contractor and outplacement coordinators (every two weeks)	~~6/12~~	6/19
16. 2 outplacement coordinators sessions	~~6/12~~ ~~6/16~~	6/19 6/23
17. Employee sessions (Retirement)	~~6/17 - 8/30~~	6/24 - 8/30
18. Employee sessions in Washington (Job Search Preparation)	~~7/7 - 9/19~~	To be determined
19. Sessions begin in Regions (Job Search Preparation)	~~7/14 - 9/19~~	To be determined
20. Final evaluation report of Outplacement Assistance Training Program delivered to Project Officer	~~10/30/86~~	To be determined

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APPENDIX B

EXECUTIVE OUTPLACEMENT ASSISTANCE COMMITTEE

Robert A. Turnbull, ADA/Management and Administration, ex officio member
Richard L. Osbourn, Director of Personnel, Chairperson
Edwin T. Holloway, AA/Finance and Investment
Harry S. Carver, Comptroller
Johnnie Albertson, DAA/Management Assistance (SBDC)
Robert B. Webber, General Counsel
George Robinson, Director, Office of EEO and Compliance
Joe Maas, AA/Administration
William Powell, Regional Administrator, Kansas City
Michael Wilkin, Deputy Regional Administrator, Philadelphia
Janice Wolfe, District Director, Washington, D.C.
Peter Bergin, District Director, Fresno
John N. Sturdivant, Executive Vice President, American Federation of Government Employees
William Batt, Quality of Work Life Advisor
Bureau of Labor-Management Relations and Cooperative Programs, Department of Labor
Carolyn J. Smith, Director, Office of Personnel Services

SBA

Budget Proposal and Potential Personnel Impact

U.S. Small Business Administration

March 1986

Introductory Note from Jim Sanders

Why am I issuing this brochure now? This is certainly a question that I expect many of you to be asking. So that you do not jump to incorrect conclusions, let me give you my rationale.

I have received much feedback from Agency employees during the last several weeks in response to reports in the news media concerning the FY 1987 budget proposal insofar as it affects SBA, as well as feedback on reactions to my resignation. From this feedback it became clear to me that additional information should be provided to all our employees.

Long range management planning in government agencies is a tentative exercise in normal budget cycles. When you compound that, as in the FY 1986 and 1987 budget proposals for the SBA, you find yourself at the start of the next fiscal year beginning the shut down and transfer of agency functions or, at the other extreme, a continuing resolution from Congress to do "business as usual." We know that no one outside the agency will address the logical career concerns of SBA employees arising from the uncertainties of the budget process, so I believe it is incumbent on agency management to re-state the basics that operate in the various possible resolutions of the budget.

As will be clear from the responses to the questions below, much has yet to happen in the budget process. Congress may accept the FY 1987 SBA budget proposal. In that event, I want to inform you, based on information we know now, what the "people" impact would be. Don't expect necessarily to find here definitive information as it pertains to you personally. All decisions which would provide that information have not yet been made. However, you should find sufficient details to indicate what the proposal contains concerning the specific program in which you work and a description of the numerous "safety nets" that exist for

those SBA employees who would be adversely affected by implementation of the proposal.

I hope this brochure will help to reduce some of the concerns you may have. In the meantime, I urge you to continue to perform your responsibilities in a competent manner. The progress that has been made and the pride you have exhibited in your work is positive testimony to your professionalism. As an agency that remains open for business, SBA must continue to reflect the positive image of an efficient and productive agency.

Please be assured that as additional information on SBA's budget for FY 1987 becomes available it will be provided to you.

James C. Sanders

FY 1987 Budget Proposal

Q. Does it automatically follow that if Congress approves the abolishment of SBA as an independent agency that I will be separated from the Federal Service?

A. No, not at all. The administration proposal provides that almost 2300 people will be transferred with their respective functions to Commerce and Treasury — the chart below reflects that proposal by activity:

ACTIVITY	FY 1986 Current Year	FY 1987 COMMERCE	FY 1987 TREASURY
Finance & Investment —includes servicing and liquidation.	1,533.2	—	929.0
Procurement Assistance —includes all except traditional PCR functions.	254.6	226.0	—
MSB/COD —includes 8(a) function.	305.9	255.0	—
Innovation, Research and Technology —All.	8.4	9.0	—
Business Development —includes SCORE related positions only.	351.5	10.0	—
Special Programs —includes National Advisory Council Staff only.	24.6	3.0	—
Advocacy —All.	55.6	58.0	—
Management and Administration —Represents overhead necessary to support program transfers.	338.8	17.0	135.0
Information Resources Management —Represents overhead necessary to support Portfolio Management.	78.8	—	60.0
General Counsel	313.9	—	100.0
Inspector General	118.6	—	—
Hearings & Appeals —includes those positions allocated to size determination.	20.0	11.0	—
Congressional and Legislative Affairs	11.5	—	—
Executive Direction & Field Administration —includes size standards	670.0	6.0	140.0

ACTIVITY	FY 1986 Current Year	FY 1987 COMMERCE	FY 1987 TREASURY
—Represents overhead necessary to support program transfers.			
SUBTOTAL	4,085.4	595.0	1,364.0
Disaster Assistance —includes all temp loan servicing	1,053.7	—	300.0
TOTAL	**5,139.1**	**595.0**	**1,664.0**

Q. In the event that the budget proposal does not pass Congress and SBA continues as an independent agency, how will SBA and its employees be affected by the Gramm-Rudman-Hollings Bill (GRH)?

A. This question is not easy to answer simply. The activation of GRH provisions for FY 1987 is dependent upon Congressional action or inaction with respect to reaching an estimated government-wide deficit level of 144 billion for FY 1987. In the event that Congressional action does not cause the deficit to be reduced sufficiently by September 1986, a determination would be made with respect to the projected deficit level vs. the statutorily prescribed level of 144 billion. This computed percentage would then be applied across the board to every "Program, Project or Activity" equally. The level of that impact would be determined then. Depending on the severity of the reduction, SBA could achieve its goal through an internal reorganization and normal attrition, a hiring freeze, travel restrictions, etc., and if necessary, utilization of an "early out" retirement authorization and reduction in force. Although never before done in SBA, it could even be necessary to furlough employees.

Transfer of Function

Q. In the event that the budget proposal passes Congress, what procedures would be used to identify employees to be transferred to the Departments of Commerce and Treasury?

A. Transfer of function procedures, as explained in the Federal Personnel Manual would be followed for the identification and accomplishment of this action.

Q. What is a Transfer of Function?

A. A Transfer of Function occurs when an entire function or a clearly identifiable segment of an agency's mission is moved from one competitive area to another, or from one agency to another.

Q. How is it determined whether I will be transferred?

A. Once final budget decisions are made and the Agency (SBA) has identified the function or activity to be transferred, a review of the work performed by the employees within the function would then be made. In most cases, if you perform the function being transferred all (or a major part) of the time, then you will transfer.

Q. If I'm identified to transfer and the transfer requires a geographical change, would relocation costs be paid?

A. Yes.

Q. What will happen if all of the positions identified with the function cannot be transferred because of budget limitations and/or GRH?

A. We believe all identified employees would be transferred to the new agency. Any further reductions in force would be implemented by the new agency and transferred SBA employees would then compete with the existing employ-

ees in the new agency. Should it become necessary to implement a reduction in force, we expect that normal attrition may lessen the impact.

Q. If I am not identified for transfer with my position, what happens?

A. If you do not transfer with your position, you would be separated from the Federal Service. You may be entitled to either severance pay or retirement if your transfer was to another geographic area. (More detailed information on severance pay and retirement follows.)

Outplacement Assistance

Q. In the event that I am separated from the Federal Service as a result of my job being abolished, what assistance and entitlements may I expect?

A. If major reductions take place, the Agency is committed to providing outplacement assistance to affected employees. In addition, you may be eligible for one or more of the following benefits or entitlements: retirement, severance pay, unemployment insurance, payment for accrued annual leave, continuation or conversion of health and life insurance, and re-employment priority programs.

Q. What kind of assistance would I be given in locating another job?

A. The Agency will establish (possibly with the assistance of a contractor) a nationwide Outplacement Assistance Program. Some features of the Program that would be considered are career and retirement planning, preparaton for job search, and other assistance in locating prospective employment in both the public and the private sector.

The SBA does have the advantage of many internal resources that may be helpful in identifying viable job opportunities. In addition, SBA has the advantage of its knowledge of and con-

tacts in the private sector to aid in identification of job opportunities.

Q. Would I be placed on a Displaced Employee List?

A. Yes. SBA would assist those separated employees who are not transferred to Commerce or Treasury by providing the necessary forms and guidance to be included on the OPM Displaced Employee List. The List is used to refer qualified individuals to Federal agencies who request Certificates of Eligibles from OPM for vacant positions. Although individuals identified as Displaced Employees on the certificate must be placed before any other selection from the certificate can be made, being on the certificate is no guarantee of employment.

Retirement

Q. Would I have the option to retire?

A. Yes, if you meet the following minimum eligibility requrements:

For regular retirement

— Age 62 with at least 5 years of service; or

— Age 60 with at least 20 years of service; or

— Age 55 with at least 30 years of service. (At least 5 years of service must have been civilian.)

For discontinued-service (involuntarily separated, not due to misconduct) or OPM-authorized early-out retirement:

— Age 50 with 20 years of service; or

— Any age with 25 years of service. (Years of service must include at least 5 years of civilian service.)

Q. Is the annuity reduced under discontinued -service or early-out retirement?

A. Yes. The annuity is reduced by 1/6 of 1 percent for each full month (2 percent a year) an employee is under age 55.

Q. Would I be eligible for severance pay if I decide to retire?

A. No. If you are eligible for an immediate annuity, you are not entitled to receive severance pay.

Q. What happens to my retirement contributions if I am not eligible to retire?

A. You have two options:

1. You may leave your retirement contributions in the retirement system and collect a deferred annuity at the age of 62, if at the time of your separation from the Federal service you completed at least 5 years of civilian service, or
2. You may withdraw the retirement contributions that were deducted from your pay.

Severance Pay

Q. If I have not located other Federal employment, and I am not eligible for retirement, am I entitled to severance pay?

A. In most cases, yes.

Q. How do I know if I am eligible for severance pay?

A. To be eligible for severance pay, you must be serving under one of the following types of appointments at the time of involuntary separation:

1. A career or career-conditional appointment in the competitive service, or their equivalent in the excepted service;
2. A temporary appointment provided it fol-

lowed service under a permanent appointment by not more than 3 days;

3. A Senior Executive Service career appointment.

In addition, you must have been currently employed for a continuous period of at least 12 months. If you were either a part-time or full-time employee and you meet these requirements you are eligible for severance pay.

Q. How would the amount of severance pay be determined?

A. Your severance pay fund (that is, the maximum amount of severance pay you may receive) would be determined on the basis of your basic rate of pay at the time of separation and years of creditable service (basic allowance). If you are over 40 years of age, an age adjustment allowance would also be a part of the formula.

Your basic allowance would be computed on the basis of one week's basic salary for each year of creditable service for the first 10 years, and two weeks' basic salary for each year of service thereafter. Your age adjustment allowance is computed on the basis of 10% of the basic allowance for each year your age exceeds 40 years of age.

For example, if you are 45 years old with 20 years of creditable service, and you are paid as a GS-12, Step 4, $34,781 per annum, with a basic weekly salary of $668, your severance pay fund would be computed as follows:

BASIC ALLOWANCE:

$668 (weekly salary) x 10 (first 10 years)	= $6,680
$668 (weekly salary) x 2 x 10 (years in excess of 10)	= $13,360
	= $20,040

AGE ADJUSTMENT ALLOWANCE:
$20,040 (basic allowance) x 5 years over 40) x 10% = $10,020

SEVERANCE PAY FUND:
$20,040 (basic allowance) + $10,020 age adjustment allowance)
Total = $30,060

LENGTH OF PAYMENTS:
$30,060 divided by $668 = 45 weeks at $668 per week

Q. What method of payment is used?

A. As a separated employee you would receive from the Treasury Department a check every two weeks for approximately the same amount as you received from SBA until you are either reemployed in the Federal government or your severance pay fund is exhausted. The only deductions from your severance pay would be Federal and state taxes. Retirement and insurance would not be deducted.

Q. What is creditable service? Does it include military service?

A. Creditable service for severance pay purposes is any service which is creditable for leave accrual purposes, including military service, provided the military service interrupts otherwise creditable civilian service. Military service which precedes civilian service is not creditable for severance pay purposes.

Q. If my function is transferred to another geographic area and I chose not to transfer, would I be entitled to severance pay?

A. Yes. If you are otherwise qualified for severance pay, and you are separated for declining a position in another geographic area in a transfer of function you would be entitled to severance pay.

Q. Should I be separated as a result of budget decisions, may I accept other employment and still receive my severance pay?

A. Yes, unless your new employment is in the Federal Service. However, if you accept a temporary appointment with the Federal Government, your severance pay will be suspended during your temporary employment and then resumed upon termination of the appointment. If you accept an appointment without time limitation with the Federal Government, regardless of whether the tour of duty is full-time, part-time, or intermittent, you lose your right to severance pay, and further entitlement to severance pay will depend upon the nature of a subsequent separation.

Q. Is entitlement to unemployment compensation a bar to severance pay?

A. No.

Q. Could I receive unemployment compensation while I am receiving severance pay?

A. Each state has different laws and regulations applying to unemployment compensation. Your servicing personnel office should be able to respond to this question.

Q. Is there any limit on the amount of severance pay I could receive?

A. Yes. The total severance pay you are entitled to receive is limited to 52 weeks. This is a lifetime limitation. If you were separated now and had never before received severance pay, your maximum entitlement could be as much as one year's pay at the rate of pay you received before separation. Therefore, if you are in a position to receive severance pay a second time, your severance pay cannot continue after the sum of the two periods reaches 52 weeks.

Other Entitlements

Q. Should I be separated as a result of budget decisions, what happens to my annual and sick leave?

A. You would receive a lump-sum payment for the amount of unused annual leave as of the date of your separation. You are not paid for unused sick leave; however, your sick leave would be restored if you are reemployed in the Federal service within 3 years from the date of your separation.

Q. In this situation, could I collect unemployment compensation?

A. In some cases, you may be eligible for these benefits regardless of the fact that you also receive severance pay and a lump-sum annual leave payment. In other cases, unemployment compensation would not be paid until those benefits have been exhausted. The length of time that benefits are payable and the amount paid also varies from state to state.

Q. If I am separated from the Federal Service may I retain my health and life insurance?

A. Your Federal health insurance enrollment terminates when you separate; however, you may at your own cost, convert it to an individual contract with the carrier of your plan.

Except for accidental death and dismemberment, an employee's life insurance coverage terminates 31 days after separation. The accidental death and dismemberment coverage terminates upon separation. The personnel office will provide the employee with a notice of conversion privilege entitling him/her to convert to an individual policy. No medical examination is required.

Q. Where may I phone to receive an answer to a more specific question?

A. Your servicing personnel office would be able to answer specific questions relating to your situation as additional details on the status and impact of the budget proposal become known. Also, the Administrator has implemented a pilot program which provides the opportunity for agency employees to phone the SBA Answer Desk during specified periods to obtain current budget status and general personnel impact information. Specific information on this pilot program will be provided in SBA's weekly Update.

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Senator BAUCUS. You say that you are going to be Acting Director for the time being. What does that mean?

Mr. HEATHERLY. Well, you know that same phrase is used on all Presidential appointment certificates. I was reading the one on my wall from the Education Department; this fancy certificate with the seal and the President's signature on it. If you read the fine print, it always says "for the time being."

Senator BAUCUS. What does it mean to you?

Mr. HEATHERLY. What it means to me is that I will serve in this capacity as Deputy Administrator or Acting Administrator until such time as a permanent Administrator is appointed and sworn in.

Senator BAUCUS. Is there any discussion about how long you will be acting, how long it will be before the administration names an Administrator?

Mr. HEATHERLY. I have had no discussions on that subject.

Senator BAUCUS. I'm sorry?

Mr. HEATHERLY. Honestly, I've had no discussions on that subject.

Senator BAUCUS. Didn't the question arise in your mind?

Mr. HEATHERLY. Not really.

Senator BAUCUS. Not really?

Mr. HEATHERLY. No.

Senator BAUCUS. A little bit maybe? [Laughter.]

Did the question arise in your mind a little bit as to how long it would be?

Mr. HEATHERLY. Senators have 6-year terms and Congressmen 2-year terms and the President 4-year terms. Political appointees live day to day.

Senator BAUCUS. But could you answer the question, please? Did the question arise a little bit?

Mr HEATHERLY. It has not arisen in any discussions with anyone.

Senator BAUCUS. That's not the question I'm asking. The question I'm asking, did it come to your mind, the question how long will it be before you're replaced by an Administrator?

Mr. HEATHERLY. I think that as long as the——

Senator BAUCUS. Or whether you would be named Administrator?

Mr. HEATHERLY. My personal conjecture is only this, Senator. I have not asked to be considered for the nomination of permanent Administrator. It's not been discussed with me. I have no desire to serve as permanent Administrator. I desire to serve as Deputy Administrator and acting until such time as the President reaches a decision about his proposal, whether it is still viable or not.

Senator BAUCUS. Did you ask anyone whether an Administrator would be sent up, whether a name of someone would be sent to the Hill?

Mr. HEATHERLY. I have not asked and it has not been discussed with me.

Senator BAUCUS. You haven't asked anyone?

Mr. HEATHERLY. No.

Senator BAUCUS. And no one mentioned anything to you?

Mr. HEATHERLY. No, Senator.

Senator BAUCUS. What concerns me as everyone else on this committee, is all the problems that have come up—morale problems, which I think is probably the major point, the message that your action and nonaction is sending to the rest of the country, particularly the small business community, is how you and this administration can have the audacity to proceed with, in effect, dismantling when it's the Congress, not the President, which writes the law. Under our form of Government, the Constitution says that the Congress legislates and the executive branch administers. Obviously this transfer cannot go into place unless Congress so authorizes.

I do understand that, yes, the President has the right—in fact, in some cases the duty—to propose legislation to the Congress. On the other hand, I think it is highly inappropriate for an agency to proceed to act as if that legislation has been enacted; that is, in a de facto way basically to do what it wants to do——

Mr. HEATHERLY. But we haven't done that, Senator.

Senator BAUCUS. Well, I must say, Mr. Heatherly, I have a memorandum which indicates——

Mr. HEATHERLY. That referred to contingency planning.

Senator BAUCUS. The chairman of the committee also mentioned a memorandum which certainly goes in that direction. You, by your own words, have said that, yes, there have been discussions about how to carry through all this in the event a proposal is agreed to, and you have further agreed that, yes, you confirmed a memorandum written by someone in the SBA which contemplates reducing programs—obviously contemplates the proposed proposal.

I guess what I don't understand is how, as I said, the administration has such audacity to proceed to such a degree, particularly when, as the chairman indicated, there are no sponsors of the proposal in the Senate. You can tell by this committee, and I'm sure by the Government Operations Committee, that the proposal is not going to get enacted.

So my question to you is: When are you going to withdraw the proposal?

Mr. HEATHERLY. That's not my decision.

Senator BAUCUS. When do you think personally it should be withdrawn?

Mr. HEATHERLY. I haven't given it that much thought, Senator.

Senator BAUCUS. Obviously you've given it a lot of thought.

Mr. HEATHERLY. No, Senator, because I think——

Senator BAUCUS. Mr. Heatherly, obviously you have given that question a lot of thought because you know what the opposition is; you know that Congress is not going to pass this. Obviously you have thought about when and under what circumstances the proposal should be withdrawn. I'm just asking you for your personal opinion, your personal view, as to when you think and under what circumstances the proposal should be withdrawn.

Mr. HEATHERLY. Well, I will answer that, but first I want to correct something you said about dismantling. We haven't dismantled anything, and it's not my intention to dismantle anything. I've tried to make that clear in my statement for the record.

Senator BAUCUS. That's your opinion, and this committee has another opinion, but we're not addressing that question.

Mr. HEATHERLY. Our intentions——

Senator BAUCUS. The question I'm addressing is, given the overwhelming opposition to the proposal and given the obvious conclusion there is no way in the world this is going to be enacted into law, when do you personally think and under what circumstances do you think that the proposal should be withdrawn?

Mr. HEATHERLY. I do not come before the committees of Congress to express my personal opinions. I come here to represent the administration, Senator. Until the administration makes a decision on that, I'm not going to speculate on it.

Senator BAUCUS. Do you have a personal view about that question?

Mr. HEATHERLY. Yes, Senator.

Senator BAUCUS. What is it?

Mr. HEATHERLY. I would be happy to offer it to you over a cup of coffee somewhere, but not on the record.

Senator BAUCUS. Well, we can serve a cup of coffee right here. [Laughter.]

Would you like to have coffee? [Laughter.]

Mr. HEATHERLY. If we can have it in your office, Senator.

Senator BAUCUS. Well, I think these things should be in the open.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much, Senator Baucus.

Senator Boschwitz.

Senator BOSCHWITZ. Mr. Chairman, I really don't think it serves much purpose for me to question the witness any further, though I would like to make something by way of a statement because, frankly, I find it very difficult to follow this witness and I find his testimony to be very disturbing.

Let me start, Mr. Chairman, by saying that Saturday afternoon about 6:15 or so I called some of my warehouses in Minnesota and other States to see how they did. My No. 1 son, was in Chicago and on the plane and he couldn't call, so I called down to see how the volume was for that day in some of our stores. I still have a very active interest in my business.

This morning I got up quite early and wrote an ad about kitchen cabinets. Mr. Heatherly, I know that is probably not very stimulating to you but it is to me. [Laughter.]

I put together a pretty good ad, as a matter of fact. It concerned Merrilat Kitchen Cabinets. They're the largest cabinetmaker in the country, and we're one of their largest customers, as I noted in that ad. Old Orville Merrilat started with an SBA loan and recently sold his company for $212 million. So he succeeded mightily.

As I called around to these stores on Saturday—and this weekend I had a long discussion with No. 2 son, who is also active in our business and who spent the weekend with us—as I called around to these stores; if I said, "I'm going to sell half the stores. I don't know which ones. Or I'm going to change the whole nature of the business. I don't know exactly how. I don't know which of the people will survive or if I'm going to be needing all of you in the future," if that would not be considered to be a dismantling of my business, no matter what the niceties of whatever law or regulations or if I put out some type of an operating manual, even if it had not violated any of the aspects of the operating manual or

hadn't violated the specific aspects of the statute, I can tell you that I would have begun the dismantling of my business. I would not have had to wait until Monday for everybody in all the warehouses across several States to know about, because they would know about it even during the course of the weekend.

I would submit to you that you are, indeed, dismantling—I quote you in answer to Senator Baucus. You said you're not dismantling anything. "It is not my intention to dismantle anything." I would suggest to you, Mr. Heatherly, that perhaps Senator Kasten is right, that your experience is simply not broad enough to understand that, indeed, you are dismantling something, and it's called the Small Business Administration, when you make these kinds of statements to the press, lighthearted or not.

You say you're carrying out the law. You say you have no desire to be the permanent Administrator. I don't know how you expect this committee to believe that you're in some kind of a transitional mode when you come in the first or second day and fire six of the Regional Administrators. It simply doesn't follow.

If you are not under the law—if you are abiding by the specific strictures of the law, if you are not dismantling the SBA, you certainly are doing your utmost to frustrate the SBA. To me, that means that you're trying to do the same thing, as Senator Kasten said, not de jure but in fact.

If your goal is, as Senator Kasten suggested, to achieve some of the aims that the President wishes and that I supported earlier on—and I do not know if I will support these goals any further because I think that the chairman went a long way in satisfying some of the things that I had in mind—but if you want to achieve some of the goals that the President is seeking with respect to the Small Business Administration, I would suggest to you, as Senator Kasten has, that you're missing the opportunity, because you simply can't dismantle in any manner or frustrate in any manner the intentions of Congress and still constructively achieve the ends that the President is seeking to achieve.

If you are guided or if you are instructed by the folks at the White House—and I know that some of their people were here, at least earlier, and perhaps may still be here—it's well that they, too, should have this sense that we're not going to allow legislative intent fairly fought out and fairly legislated on the floor of the Senate and the House to be frustrated in this manner.

I would say to you, Mr. Heatherly, that you're either disassembling or that you don't have experience; that you perhaps don't have a sense of what you're doing. But you are dismantling something and it may not be intentional. You say, "It's not my intention to dismantle anything." You are dismantling something. It is the Small Business Administration. You simply can't continue in that way in the event that you intend to carry out the intentions of Congress.

That's not by way of question but more by way of statement, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Boschwitz.

Senator Kerry.

Senator KERRY. Mr. Chairman, I would like to second the comments of Senator Boschwitz.

I would like to come back to my earlier question, if I can. On what information did you act when you fired the six Administrators within 24 hours of achieving this position?

Mr. HEATHERLY. Senator, while it's true that I took those actions on my first day as Acting Administrator, it's a little misleading to say that I did it on my first day in office. I was sworn in as Deputy Administrator on March 26, 5 days previously, and I was offered the position by the White House on March 20, which would be 12 days in which to gather information and to talk to people. Also, I had had an interest in the agency for approximately a month prior to that, when I first became serious about pursuing the position.

So it's a little bit misleading to say that I took these actions on my first day. That was the first day on which I had authority.

Senator KERRY. Well, what information did you act on? Did the White House tell you to fire those people?

Mr. HEATHERLY. No, Senator.

Senator KERRY. So you acted by yourself?

Mr. HEATHERLY. Each agency head, whether it is a Cabinet officer or an independent agency, or any agency head, has the sole authority——

Senator KERRY. I understand that. I just asked you, did you act by yourself?

Mr. HEATHERLY. No, I did not act solely on my own.

Senator KERRY. Well, whose recommendations did you follow?

Mr. HEATHERLY. I gathered information from many sources, people within the agency including Sanders appointees; people outside the agency, people in associations, people in the White House, people in many parts of town——

Senator KERRY. And they recommended firing them?

Mr. HEATHERLY. Among other actions, yes, Senator.

Senator KERRY. They gave you alternatives, other actions, other possibilities?

Mr. HEATHERLY. On the personnel front, these were the actions that I felt were necessary to take on the first day.

Senator KERRY. Were you trying to send a message on the first day?

Mr. HEATHERLY. Yes, Senator.

Senator KERRY. What was the message you were trying to send?

Mr. HEATHERLY. That I wanted people on our political team who are committed to the President's program.

Senator KERRY. Which is dismantling the agency?

Mr. HEATHERLY. Which is transferring the agency to the Department of Commerce after the loan programs have been terminated.

Senator KERRY. Which is contrary to the law?

Mr. HEATHERLY. Obviously that's why we're seeking to change the law.

Senator KERRY. But do you seek to put people onto a program that is contrary to the law when Congress has specifically mandating something else? How is that not to be interpreted as dismantling?

Mr. HEATHERLY. I don't understand the inference that proposing a change in the law is somehow violating the law.

Senator KERRY. When you act to do other then the law currently says—you say you wanted people who are onboard——

Mr. HEATHERLY. Who will help advocate for this change.

Senator KERRY. The President's program is not the law yet. You're putting people in place to execute a law that's not a law, execute a program that's not a law.

Mr. HEATHERLY. No, Senator.

Senator KERRY. Yes, Mr. Heatherly.

Mr. HEATHERLY. I've never said that. I've never done that.

Senator KERRY. You just told me you wanted people onboard who are going to follow the President's program.

Mr. HEATHERLY. Who are committed to advocating the President's program.

Senator KERRY. To advocate the President's program?

Mr. HEATHERLY. That's the job of political appointees.

Senator KERRY. I thought the job of the Director of the SBA was to advocate the SBA's program.

Mr. HEATHERLY. As I tried to make clear in my memo to employees, the Administrator wears more than one hat. Any agency head wears more than one hat, Senator.

Senator KERRY. Boy, I've got to tell you, I'm even more concerned, as expressed by Senator Baucus and Senator Kasten, as I listen to this. You don't have a real view of the constitutional process, do you? Does Congress write the laws?

Mr. HEATHERLY. Absolutely.

Senator KERRY. Once it's a law, does it make a difference that the President has signed it into law?

Mr. HEATHERLY. Absolutely.

Senator KERRY. Did the President sign into law the continued funding of SBA through 1988

Mr. HEATHERLY. The reauthorization through 1988, yes, Senator.

Senator KERRY. And didn't we express in that process, as Senator Kasten has asked, a very clear intention about how that was to be carried out?

Mr. HEATHERLY. In the reauthorization, yes.

Senator KERRY. Don't you think it's appropriate that people stay in place to carry that out?

Mr. HEATHERLY. We will carry out the law, Senator.

Senator KERRY. Well, then, why did you have to fire those people?

Mr. HEATHERLY. Because part of the responsibilities of political appointees is also to advocate changes in the law. The President has the duty to make recommendations to the Congress which he feels are in the national interest.

Senator KERRY. As a matter of the human element of this, you don't think that it's important to treat people differently? These are people with families, with mortgages, with plans. Is there any special reason why they were told to clean out their desks by the same night they received notice?

Mr. HEATHERLY. Senator, on that point I'm willing to grant that we erred on the side of roughness. I think that the decision to terminate those employees was a sound decision and I have no apologies for it. The way the decision was implemented certainly could have been handled much better.

Senator KERRY. Do you think it sent a message beyond the message you meant to send?

Mr. HEATHERLY. Yes, Senator, I think it did.

Senator KERRY. Are you telling us today that you don't mean to send that message?

Mr. HEATHERLY. I'm saying that I do not regret dismissing the six employees and replacing them with six new political appointees. I think it could have been handled more humanely.

Senator KERRY. Now with respect to the whole question of dismantling, in 1981 you edited "Mandate for Leadership" for the Heritage Foundation, a 1,000-page booklet which expressed strong views and a specific process by which you can dismantle and thwart the intent of Congress without Congress' approval.

Do you still adhere to that particular process as a viable way in which to administer a program?

Mr. HEATHERLY. I dispute the premise of the question, Senator. The mandate did not recommend or endorse violating the will of Congress in any particular——

Senator KERRY. Well, it set out a way in which you can actually dismantle agencies despite congressional intent to do otherwise. It clearly did that.

Mr. HEATHERLY. No, I don't accept that interpretation, Senator. It said that agency heads all across town have certain administrative discretion in terms of reorganization and how functions are carried out; not whether they should be carried out, but how they are carried out.

Senator KERRY. Let me read from the book, because it specifically set out concepts for reorganization. "However, it is possible to remove all or most of the personnel and functions from a given organization unit; thus, making it much more amenable to control, dispersal, and eventual elimination." It's pretty direct stuff, isn't it? [Laughter.]

Mr. HEATHERLY. That relates, Senator, to units within agencies.

Senator KERRY. Well, functions are functions. If you're eliminating functions and Congress wants those functions, you are thwarting the will of Congress, are you not?

Mr. HEATHERLY. Only if the functions eliminated are mandated by the law. Agencies——

Senator KERRY. They aren't eliminated as mandated by the law. Let me be specific. The chairman has talked about the certificate for the 503 loans; correct? That's part of the program. That's a function, isn't it?

Mr. HEATHERLY. Yes.

Senator KERRY. A legitimate function which we've authorized; correct?

Mr. HEATHERLY. Correct.

Senator KERRY. And you have confirmed that those certificates are not going to be issued. Now I'm informed by financial experts, people who have considerably more experience than you or me in this field, that there is going to be a serious negative impact on the program's future as a consequence of that. Now I think it's pretty clear to most of us in Congress, that a 300-to-15 vote in the House and an 80-something-to-whatever—14—here in the Senate on the President's budget is a pretty fair expression that that budget is dead. Is that correct? Do you read it that way? Do you share that?

Mr. HEATHERLY. There will be many votes on the President's budget and various alternatives to it over the next few months, Senator.

Senator KERRY. Do you share the perspective that the expression with respect to zero funding here, there, et cetera, is dead? I mean I think the chairman has spoken to that earlier in this hearing. He's made it very clear about his feeling with respect to the——

Mr. HEATHERLY. Well, there was no proposal to zero fund SBA.

Senator KERRY. I understand, but I'm getting to an existing function. Now you've said it's under review still. My question is, on behalf of the ASPIC's and others who are sitting out there wanting to know whether they are going to be adversely affected, can we get on with the implementation of the program?

Mr. HEATHERLY. I believe we are implementing the program as required.

Senator KERRY. Will those certificates be issued? Will you countermand that memo that you confirmed?

Mr. HEATHERLY. I will take it under review and look at it again, Senator.

Senator KERRY. Well, when can we expect an answer? Do you think we could have an answer within a week? By the end of the week will you tell us whether or not you will countermand that memo?

Mr. HEATHERLY. I'll tell you by a week from today whether we're going to reverse that memo, yes, Senator.

Senator KERRY. I appreciate that.

[Subsequent information was received and follows:]

U.S. SMALL BUSINESS ADMINISTRATION
WASHINGTON, D.C. 20416

OFFICE OF THE ADMINISTRATOR

5

Honorable Lowell P. Weicker
Chairman
Committee on Small Business
United States Senate
Washington D.C. 20510

Dear Mr. Chairman:

During the hearing on April 28, 1986, you asked if I would reconsider the decision to postpone the implementation of the pooling of Development Company and Small Business Investment Company debentures. I indicated that I would provide a response to your request within a week.

We have decided to proceed with the implementation of pooling. Every effort will be made to publish the regulations and enter into the necessary contracts by the statutory deadline. However, we feel you will agree that it would not be responsible for SBA to be forced by a time constraint into entering a contract that does not provide reasonable terms for services rendered. To do so would be a disservice to the taxpayers and the program participants. Thus, despite our full intention to proceed, there remains a possibility that we may not be able to complete the contracts within the statutory requirement of sixty days.

Program implementation will occur as soon as possible after the regulations are published and the contracts are completed. The implementation process involves such items as development and approval of new forms, development and printing of new certificates, education of the program participants regarding the new funding mechanism and time for the new contractor(s) to develop the systems necessary for program operation. While these tasks are time consuming and complex, we will take all steps necessary to complete this process before the end of the current fiscal year at the latest.

If it is possible to speed any part of this process, we shall make every effort to do so.

Sincerely,

Charles L. Heatherly
Acting Administrator

Senator KERRY. Now I have, I suppose, a lot of other questions. I don't want to belabor this, but I'm sort of irked. The chairman hasn't raised it, my colleagues haven't raised it, but I wonder what you mean or whether you want to clarify what you mean—or maybe you want to change what you said—when you say that Members of Congress are singularly inept at meeting any of their responsibilities and that Congress is without discipline and without guts to cut any program that benefits any constituent in any district. Did you say that?

Mr. HEATHERLY. I believe I said that, Senator.

Senator KERRY. Is there any doubt in your mind that you said that? [Laughter.]

Mr. HEATHERLY. Well, the press says that I—The Philadelphia Inquirer says I said it, so I guess——

Senator KERRY. But do you remember saying it?

Mr. HEATHERLY. Yes, Senator.

Senator KERRY. Do you think Senator Weicker, the chairman, is inept?

Mr. HEATHERLY. No, Senator, and I've already apologized to him.

Senator KERRY. What about Senator Boschwitz? Was he inept?

Mr. HEATHERLY. The quote, Senator, if we're going to deal in quotes, if you will read the entire paragraph in which that quote appears, says that—the quotes is with regard to the budget, meeting its budget obligation. It's still an unfortunate, regrettable quote. The Congress is not singularly inept. It occasionally has difficulties meeting its obligations. The Gramm-Rudman-Hollings legislation is a self-confession of problems in meeting its budget obligations, but to say that it's singularly inept is obviously an exaggeration, and I apologize to the Senator——

Senator KERRY. A final question: After the firings you were quoted in the newspaper as saying, "You ain't seen nothing yet."

Mr. HEATHERLY. No, I never said that and that was not in quotes.

Senator KERRY. Did you say anything similar to it?

Mr. HEATHERLY. At the end of the story there is a quote, which has been picked up and used again, that if they found the firings controversial, then I can't wait to see the reaction to something down the road. That was at the end of the interview when we were discussing the controversy, and I did not understand why the mere replacement of six political appointees by other political appointees was so controversial. If that is controversial, then anything I do is likely to be controversial. I did not have anything specific in mind, no.

Senator KERRY. Did you take an oath when you became Acting Administrator?

Mr. HEATHERLY. All Federal employees take the same oath of office, Senator.

Senator KERRY. And the oath is an oath to uphold the Constitution?

Mr. HEATHERLY. Absolutely.

Senator KERRY. And the laws of the United States; correct?

Mr. HEATHERLY. Correct.

Senator KERRY. And Public Law 99-279 is a law of the United States, isn't it?

Mr. HEATHERLY. Yes, sir.

Senator KERRY. And it doesn't contemplate any transfer to the Department of Commerce, does it?

Mr. HEATHERLY. No, Senator.

Senator KERRY. And it certainly contemplates the full 503 program, et cetera, doesn't it?

Mr. HEATHERLY. It does.

Senator KERRY. So you're under oath to fulfill that law as expressed by Congress until it is changed, are you not?

Mr. HEATHERLY. Absolutely.

Senator KERRY. Do you intend to do that?

Mr. HEATHERLY. Absolutely.

Senator KERRY. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much, Senator Kerry.

Just a couple of wrap-up questions: At a meeting in Washington on March 21 the Small Business Administration National Advisory Council adopted a resolution to maintain the SBA as an independent agency. They subsequently decided to come to Congress to make their views known.

On April 4, within roughly 2 weeks, less than 2 weeks, you removed the chairperson, Mr. James Carrington, and the executive committee of the council.

Mr. HEATHERLY. Not correct.

The CHAIRMAN. Not correct? Would you care to go ahead, then, and state what is, then?

Mr. HEATHERLY. Yes, I will. I did remove the chairman. However, the majority of the members of the executive committee remain unchanged. I did rotate 8 members of a 22-person executive committee back to their regular Advisory Council memberships and I elevated other Advisory Council members, Sanders appointees, to the executive committee. There have been some changes on the executive committee, but it's not accurate to say that I dismissed the entire executive committee. The people that I placed on the excutive committee were already members of the Advisory Council appointed by my predecessor, including the new acting chairman, Betsy Ussery.

The CHAIRMAN. Why did you remove the chairperson?

Mr. HEATHERLY. I think every Administrator needs a chairperson that he has confidence in and who supports the basic goals of the administration. Mr. Carrington was a close associate of my predecessor and was on record as opposing the President's plans for the agency. I felt it necessary to have a spokesman for the Council and a chairman for the Council who was more closely in line with administration views. That is allowed for in the standard operating procedures of the Advisory Council.

The CHAIRMAN. Since you raised the name of your predecessor, is it fair to assume, in light of your remarks, that you felt that he was not carrying out the wishes of the President of the United States?

Mr. HEATHERLY. Mr. Chairman, I do not wish to discuss history in terms of what Mr. Sanders believed or didn't believe, but his record on the matter of the President's proposal for the transfer I think is well known.

The CHAIRMAN. Well, they are well known to the extent that, as I recall, he supported—not only can I recall because I'm talking

about direct discussions I had with the Administrator—he supported the President's proposals. He and I were at a difference on that matter.

You've raised in the public press questions relative to his loyalty to the President of the United States. I want the record to show right now that he was carrying out the President's wishes insofar as this committee was concerned, of which I have direct knowledge.

I also want the record to show that that man probably is the finest Administrator that has ever held that post in terms of cleaning up the agency, in terms of redirecting its programs and in terms of enhancing it.

Do you know why this proposal lost out there in the small business community? I'm talking about the President's proposal to abolish the agency last year. It failed because that agency was of such a character and a quality, which had never been the case before in its history, that the small business community came to its assistance. Now that's the story of Jim Sanders, and you've tried to muddy it up.

I didn't appoint Jim Sanders. The President of the United States did. It was the best damned choice he ever made for his administration.

Behind the scenes—and I'm not talking about what Jim Sanders said in public; I'm talking about behind the scenes—he fought for the President's programs. The only thing he did do was to observe the constitutional process, something which apparently you have no regard for.

So when you say you don't want to go over history, I suggest, then, you stop going over history in the public press and dirtying up the name of one hell of a fine public servant.

You have several times during the course of this hearing alluded to the fact that the only thing you want to do is eliminate the loan programs, a little transfer to Commerce and eliminate the loan programs. Would you please tell me roughly what percentage of the Small Business Administration's budget are represented by those loan programs that you want to eliminate?

Mr. HEATHERLY. Approximately 90 percent.

The CHAIRMAN. It's a little deceptive, isn't it, to say, "We don't want to eliminate; we just want to transfer it."?

Mr. HEATHERLY. In terms of budget dollars, yes, Senator, that's the bulk of the proposal.

The CHAIRMAN. It sure is. So basically it's a 90-percent elimination; right?

Mr. HEATHERLY. Of dollars, yes, Senator.

The CHAIRMAN. I thank you.

I have no further questions, except those that will be submitted for response to the record. If you have any closing statement, please——

Mr. HEATHERLY. May I respond also in the record to some of the questions that were raised that I did not get a chance to address?

The CHAIRMAN. Go right ahead.

Mr. HEATHERLY. Thank you, Senator.

The CHAIRMAN. Do you want to do that now?

Mr. HEATHERLY. No, I would like to submit those for the record.

[Questions and answers follow:]

U.S. SMALL BUSINESS ADMINISTRATION
WASHINGTON, D.C. 20416

OFFICE OF THE ADMINISTRATOR

MAY 16 1986

Honorable Lowell P. Weicker
Chairman
Committee on Small Business
United States Senate
Washington, D. C. 20510

Dear Mr. Chairman:

Enclosed please find the Small Business Administration's responses for the record to the supplemental questions provided in your letter of May 7.

Both the responses to the Committee's questions, and my original testimony, indicate that:

* The President's Fiscal Year 1987 budget proposal does not call for the dismantling or elimination of the SBA. Rather, it proposes to keep the SBA as a separate entity to be moved to the Department of Commerce where it will be just as strong and vital a component as other agencies that report to a Cabinet level post such as the FBI is to Justice.

* The budget also proposes to eliminate SBA's credit activities; activities that are used by less than two-tenths of one percent of the Nation's small business community.

* The Office of Advocacy, which I believe most small businesses will tell you is the most important part of SBA, will continue to serve on behalf of these 15 million small firms, and continue to be headed by a Presidentially-appointed Chief Counsel.

* Other SBA programs which small firms rely upon and need, such as Procurement Assistance, the Small Business Innovation Research Program and the most important management assistance programs, the Service Corps of Retired Executives and the Active Corps of Executives, will all continue and prosper under the Small Business Administration in the Department of Commerce.

* The SBA program to direct special assistance to small firms owned by socially and economically disadvantaged individuals--the so-called 8(a) program--will be strengthened by combining its resources with those of Commerce's Minority Business Development Administration.

* As the Nation grapples with the massive Federal deficit, Members of Congress, yourself included, have stated that the belt-tightening of the Federal Government should be spread throughout, and not concentrated in one or two areas. Under the President's budget proposal, that is accomplished. The Small Business Administration would be kept as a separate entity within Commerce while saving an estimated $1.4 billion in FY 1987, and $5.2 billion over three years as projected in the President's Budget proposal submitted to the Congress in February.

During the Committee's hearing, several references were made to newspaper articles in which I was quoted. I have enclosed complete copies of those stories, as well as my April 2 memorandum to all SBA employees, and ask that these be placed in the record.

Further, copies of all written contingency plans, which were requested by Senator Baucus, and an edited transcript of the hearing, were forwarded to the Committee on May 9.

Should you have any further questions, please do not hesitate to contact me.

Sincerely,

Charles L. Heatherly
Acting Administrator

Enclosures

RESPONSES TO QUESTIONS REFERRED TO SBA BY
THE SENATE SMALL BUSINESS COMMITTEE
FOLLOWING THE HEARING OF
APRIL 28, 1986

QUESTION 1(a): If your intention is not to upset employee morale, what is the reason for the Out-placement Assistance Program at the SBA?

ANSWER 1(a): The Out-placement Assistance Program was not designed or intended to "upset employee morale." Work on the program was initiated for quite an opposite reason, that is, to assure employees that if out-placement is necessary, the agency was committed, and would be prepared, to provide appropriate assistance. Initial work for development of an assistance program began in February. **

In SBA, the budget situation was discussed with representatives of the American Federation of Government Employees, National Council of SBA Locals, in a two-day meeting on March 6 and 7. I am informed that the union representatives were very supportive of an out-placement assistance program. Mr. John Sturdivant, Executive Vice-President of AFGE, agreed to be a member of the Executive Committee overseeing the program.

The SBA booklet entitled "Budget Proposal and Potential Personnel Impact" (copy attached) was issued in March 1986 with an introductory memo by then Administrator, James Sanders. It stated "If major reductions take place, the Agency is committed to providing out-placement assistance to affected employees." The booklet discussed features of the 1987 Budget Proposal and explained rules regarding retirement and severance pay and promised to provide out-placement assistance if necessary. The booklet described various "safety nets" available to SBA employees, if needed. The point was to get straight and correct information out to employees to help overcome any misconceptions, misunderstandings or misinformation so they would know they would not be suddenly terminated and left with no income and no support.

The first meeting of the Executive Out-placement Assistance Committee was originally scheduled to

take place on March 27. That meeting was postponed and then took place on April 22, 1986.

I was informed on March 27 that an Out-placement Assistance program had been developed and an Executive Committee would be dealing with the program and developing policy recommendations. I have not been involved in any decisions pertaining to the Out-placement Assistance Program.

** SBA staff consulted with a number of resource persons experienced in out-placement programs in February and March. One of these individuals was William Batt, Quality of Worklife Advisor with the Department of Labor, an authority on out-placement in the private sector. Among other out-placement case experiences, he provided information about combined management and union efforts surrounding the closing of the Ford San Jose Assembly Plant.

In short, this case study found that because of an early advance notice and other effective initiatives, nearly all former Ford workers had very positive feelings about the company and the union even though some were still struggling to make the adjustment. In fact, during the last two weeks that the plant was open, Ford auditors found the plant highest in quality and productivity.

QUESTION 1(b): Why is it suddenly necessary to develop the "job search and interviewing" skills of SBA employees?

ANSWER 1(b): It is not "suddenly" necessary to develop the "job search and interviewing" skills of SBA employees. The Out-placement Assistance Program has been developed over a period of several months. I understand this was done in the belief that it took significant lead time and preparation to put together a quality Out-placement Assistance Program and it was felt that SBA employees should know the Agency was prepared to assist its employees and to meet any contingency.

QUESTION 2: You mentioned at the outset of the hearing of April 28 that you had recently met with Regional and District office personnel in an effort to restore employee morale. Please specify the dates, locations, and personnel in attendance at those meetings. Also, please provide copies of all memoranda, letters or other written material given to field employees at those sessions. Do you plan to have other such meetings? If so, when and where?

ANSWER 2: To date, I have met with all available regional and district office personnel in Philadelphia -- April 15; Chicago -- April 18; and Phoenix -- April 30. On May 16, I plan to meet with employees in the Miami District Office. No written material was distributed at the field meetings.

In addition, I met with SBA Regional (and Acting) Administrators on April 14 in Washington, D.C. The materials distributed at that meeting did not include any documents not previously submitted to your staff.

While no other meetings are scheduled at this time, I plan to meet with both district and regional personnel as my schedule permits. Four of the Regional Administrators will be in the Capital next week for Small Business Week activities.

QUESTION 3(a): On April 2, 1986, you wrote a message to all SBA employees indicating that one of your major goals as Administrator was "to prepare the Agency for an orderly transition to a new configuration at the Department of Commerce." Your goal would appear to be the total dismantlement of the SBA as an independent Agency. Shouldn't you leave to a nominee who has been the subject of a confirmation hearing, such a sweeping, drastic program of change?

ANSWER 3(a): As I wrote in my April 2 message to all SBA employees, I view my job under present circumstances as three-fold. In none of those three areas do I view my goal "to be the total dismantlement of the SBA as an independent Agency." The goal of the President's proposal - is to bring about (as I wrote) "needed changes in mission, structure and

operations" of SBA through legislative enactment. No one, least of all me, is advocating "total dismantlement" of SBA. The Administration's proposal would retain those SBA programs and activities of widest benefit to small business. I assumed the position of Acting Administrator in accordance with statutory provisions of the Small Business Act and am acting responsibly and correctly in fulfilling the position and carrying out my responsibilities. A copy of my message to SBA employees is attached, which should be read in its entirety and not quoted out of context.

QUESTION 3(b): Aren't your actions to date incompatible with the temporary nature of your position?

ANSWER 3(b): My actions to date, and those actions I will take in the future, are fully compatible with my appointment. I have not halted or changed in any material way a single publication, regulation, seminar, trade mission, loan disbursement timetable, or other program activity.

QUESTION 4: Revised regulations governing SBA's 503 Loan Program were published for comment July 5, 1985. Final Regulations were signed by former SBA Administrator James C. Sanders on March 26, 1986, and sent to OMB for clearance. OMB has returned those regulations to your office. Do you plan to ratify those Regulations? If so, when do you plan to return them to OMB for final publication? If not, why not, and what do you plan to do with them?

ANSWER 4: Those regulations were ratified during the week of April 28 and have been returned to OMB without change.

QUESTION 5(a): Would you briefly describe the current process for selling 503 debentures to FFB?

ANSWER 5(a): When a 503 project is complete, the Development Company and SBA District Office execute the documents necessary to fund a debenture. The debenture and opinion of Counsel are forwarded to SBA Central Office where debentures are grouped by term (15, 20, or 25 years). The Note and disbursement instructions are forwarded to Chemical Bank (Servicing Agent). SBA Central Office and the Servicing Agent compare information to assure that documentation is complete and accurate. SBA offers debentures to FFB 5 business days prior to Wednesday of the first full week of the month (sale date). On the sale date, FFB disburses funds to the Servicing Agent who distributes funds pursuant to disbursement instructions received from the Development Company.

QUESTION 5(b): What changes do you envision in that process when debentures are sold in the private capital markets, and how do you propose to implement those changes?

ANSWER 5(b): We envision that the existing mechanism for 503 debentures will be retained as much as possible. The Servicing Agent functions, and the SBA Central Office functions of grouping debentures, will remain the same. However, instead of selling debentures to the Federal Financing Bank, our plan is to pool debentures and sell pool certificates to private sector investors on a negotiated, underwritten basis through a selling group consisting of two or three investment banking firms. We envision contracting for Fiscal and Transfer Agent services which would include, but not be limited to:

1. Engage the selling group and assure certificates are sold in an efficient, effective, and economical manner on a timely basis.

2. Maintain a central registry of debentures, debenture pools and pool certificates.

3. Issue pool certificates on benalf of SBA.

4. Perform paying agent functions with respect to sale of certificates and payment to certificate holders.

QUESTION 5(c) When do you envision approval of the first "504" Debentures?

ANSWER 5(c) We expect to begin approving 504 loans/debentures in July 1986 by which time FFB authority is expected to have been fully utilized. Because SBA's approval is a commitment to provide permanent financing on a project that usually involves construction, the first funding of 504 debentures is not expected to occur before December 1986 or January 1987. However, should sufficient volume of 504 Debentures be available to have a successful offering earlier, it will be done.

QUESTION 6: What steps does the Administration plan to take to educate SBA field staff and CDCs on the private-sale approval process?

ANSWER 6: The primary means of educating SBA field staff and CDCs on the private sale approval process will be through publishing regulations, issuing Standard Operating Procedures and Notices, and the use of new forms. Distribution of this information is made to both SBA field staff and CDCs. Also, in June and July we plan to participate in field conferences to explain the process of private funding of Development Company Debentures. Finally, guidance will be given on a case by case basis when warranted.

QUESTION 7: The law requires the Administration to promulgate final rules to implement the issuance of certificates under Section 505 of the Small Business Investment Act. What effective date do you propose for those regulations?

ANSWER 7: Every effort will be made to publish the Regulations and enter into the necessary contracts by the statutory deadline June 6, 1986. The effective date of the Regulations to implement sections 504 and 505 of the Small Business Investment Act will be the date of publication.

QUESTION 8: You indicated in your letter of May 5, 1986, that the Administration will implement Section 505 of the Small Business Investment Act, which provides for certificates carrying SBA's full faith and credit guarantee and representing undivided interests in a pool of 504 debentures to be issued to investors.

What specific action have you taken to date to develop the final rules and regulations SBA is required to put in place within 60 days?

ANSWER 8: The legislation has been evaluated, meetings have been held with representatives of the Development Company industry, securities industry and other related parties. Draft Regulations have been developed to implement sections 504 and 505 of the SBI Act and they are in the clearance process within the Agency. Every effort will be made to expedite the review process so that we may meet the statutory requirement.

QUESTION 9: Once Pooling Regulations are in place in compliance with P.L. 99-272, what actions do you intend to take to approve trusts or pools composed of SBA guaranteed SBIC Debentures based on and backed by those Pools?

ANSWER 9: Once regulations complying with P.L. 99-272 are in place, we expect to enter into agreements with parties as necessary for performance of the functions required for pooling SBIC debentures and issuing and selling certificates of trust based thereon. Included in this, of course, will be the contracting for performance of the central registration functions required by Sec 321. As soon as these contractual arrangements are in place, we expect to implement funding of the SBIC program through the new mechanism thus created.

QUESTION 10: Prior to the time these final Pooling Regulations are in place, as required by P.L. 99-272, what action are you taking, and/or what instructions have

you given your staff, to make sure the SBIC industry continues to have access to government guaranteed leverage? Specifically:

QUESTION 10(a): Are applications being processed in a timely fashion?

ANSWER 10(a): All applications received are being routinely processed with respect to credit and regulatory eligibility. Any matured debentures for which a funding application has been approved will be carried on demand at current interest rates until a new financing source is available. We have notified the licensees of the need for revised documentation, which is now in final drafting, to effect the sale of their individual debentures to private holders with SBA's guarantee. We are also working on other details of this possible interim funding method as well as proceeding with the implementation of P.L. 99-272 Pooling and will advise SBICs shortly as to the earliest availability of either method.

QUESTION 10(b): Are leverage funds currently being granted SBICs?

ANSWER 10(b): No, for the reasons described in response to Part (a) of this question.

QUESTION 10(c): Have policies been established and action taken to help the SBIC industry take their debentures to the private capital markets?

ANSWER 10(c): We have advised SBICs that, while we are endeavoring to find financing sources to replace the FFB, they should also find sources of their own. To date, we have heard from only one licensee in this regard to whom we provided draft documentation. We note that the industry trade association (NASBIC News 4/29/86) is advocating collective action as being the "most economical."

In short, we are presently proceeding with two new systems for funding SBICs. One is the pooling mechanism authorized by P.L. 99-272 and the other is a short term or fall back mechanism for collective or single sales of guaranteed debentures under existing regulations. We will use either or both of these mechanisms as timing, funding demand, and market conditions may dictate.

QUESTION 11(a): In P.L. 99-272, the Congress voted to authorize three years of Handicapped Assistance Loans at current funding levels. How much of the $15 million appropriated for FY 1986 have in fact been lent so far? Have you stopped taking applications for FY 1987, and if so, why?

ANSWER 11(a): The $15.0 million that was appropriated for FY 1986 was reduced to $14.355 million by Gramm-Rudman-Hollings. Through April 30, 1986, $11.390 million has been approved and the remainder of $2.965 million is awaiting fourth quarter funding.

Early in February, because of the excessively long period until actual funding of the loans in October, and in view of budget uncertainties, the decision was made to temporarily stop accepting HAL applications. It was felt that much of the financial information would be stale and to cause the prospective borrower to incur additional costs to update their application did not seem reasonable.

QUESTION 11(b): When will you resume taking applications for FY 1987 to insure that, once funds are available for FY 1987, eligible borrowers will immediately receive loans?

ANSWER 11(b): The regions were instructed to keep chronological lists of interested prospective HAL borrowers. It is currently anticipated that these people would be notified about the end of June to submit their applications if still interested. Once these people have been accommodated, the program would be reopened to the public generally.

QUESTION 12: Your predecessor, prior to his departure, had signed off on a number of vital regulations relating to the Small Business Development Center (SBDC) Program. These regulations were the result of many arduous months of negotiations and have been eagerly awaited by those most concerned. They represent a major clarification in the operations of the program. We have heard that OMB has taken the unusual step of sending these draft regulations back to you for your approval. When do you expect to sign off on these regulations?

ANSWER 12: The Agency approved and signed off on the proposed Federal Regulations on March 28, 1986. These proposed regulations were sent to the Office of Management and Budget on March 31, 1986. The SBDC regulations were returned in mid-April.

On April 29, the proposed Federal Regulations for the SBDC Program were resubmitted without change to OMB for review and clearance.

At the conclusion of the OMB process, the Agency will follow established procedures; i.e., publish in the Federal Register, allowing 60 days for public comment before issuance as a final rule.

QUESTION 13: What other regulations or action memoranda are currently awaiting your approval?

ANSWER 13: There are proposed regulations pending for SBA's Minority Small Business and Capital Ownership Development Program (MSB/COD). These regulations are intended to implement the MSB/COD program as established in sections 8(a) and 7(j) of the Small Business Act, through alteration of existing regulations or addition of new provisions. These regulations are being developed after earlier periods of public comment and consultation with Congressional committees and staff. I have asked SBA program and legal staff to prepare a final review and analysis of these proposed regulations for me prior to any final action.

QUESTION 14: Section 18007 and 18013 of P.L. 99-272 require changes in the guarantee loan program, increasing the guarantee fee from one to two percent and reducing the guarantee to 85 percent for loans over $155,000. What is the status of the regulations which have been drafted implementing these changes?

ANSWER 14: The program changes effective April 8, 1986, reducing the guaranty to 85 percent in loans over $155,000, and increasing the guaranty fee from one to two percent, were implemented by notice to the field on April 8. The regulations have been completed, cleared and we expect publication on May 20, 1986.

QUESTION 15: During the April 28 hearing, you stated you had not discontinued any program since becoming Acting Administrator. We have heard reports that training programs for new District Directors have been discontinued. Have you ordered the discontinuation of this training program for District Directors? If so, when and why did you take this action? Do you plan to reinstate the program? If so, when?

ANSWER 15: We have two candidates in SBA's third class of District Director Candidates. The individuals were selected for the program on March 17 and scheduled to officially enter the program on April 27. The program was not discontinued. However, the starting date was deferred. A decision was made late on April 25 to proceed with the training for the third class and May 25, 1986 was set as the beginning date.

QUESTION 16: Title XVIII of P.L. 99-272 makes a number of changes in the Disaster Loan Program, including the elimination of the Federal Action Economic Injury Program and the Currency Devaluation Economic Injury Program. It also eliminated eligibility of Agricultural Enterprises from the program. However, the rest of the disaster loan program remains intact. What changes in the program have you initiated as a result of the enactment of Title XVIII?

ANSWER 16: On April 8, 1986, the Disaster Area Offices were notified of the enactment of P.L. 99-272 and told to implement it. That is, all loan applications from agricultural enterprises resulting from disasters declared on or after October 1, 1985, that had not been approved on or before April 7 were to be returned to the applicant with an explanatory letter and no new applications from such disasters were to be accepted. The area offices were also instructed to inform the affected state FmHA offices. There were no non-physical economic injury disaster declarations issued on or after October 1, 1985.

These instructions were formally transmitted to all SBA field offices in SBA Notice 5000-129 (copy attached). By letter dated April 9, 1986, the Administrator of FmHA was notified of the change and requested to inform his appropriate field staff (copy attached). By letter dated April 9, 1986, each Senator and Congressman was informed of the change (copy attached). Also on April 9, 1986, FEMA was notified and asked to inform their field offices of the change. Subsequently, FEMA coordinated written notice to their field offices with SBA.

QUESTION 17: We have recently received an information packet written and printed by the Small Business Administration, containing a number of papers and/or publications relating to the President's proposal to transfer the SBA to the Departments of Commerce and Treasury. With regard to the information packet and its contents, please explain:

QUESTION 17(a): Who directed the writing and publication of the various items included within the packet. In particular, who wrote the flyer entitled, "The Future of SBA?"

ANSWER 17(a): Richard Utley, Assistant Administrator for Public Communications, directed the preparation of the informational package. Robert W. Dietsch, Director of News Services, wrote the booklet entitled "The Future of SBA," basically utilizing factual questions and answers prepared in February 1986 in other informational materials.

QUESTION 17(b): How much money was expended in writing and preparing the informational packet, and how many man-hours were expended by SBA personnel in its preparation? How much money was expended in writing, printing and disseminating the flyer entitled, "The Future of SBA?"

ANSWER 17(b): Approximately eight hours were expended in writing and editing the informational package, at a cost of approximately $700. Approximately three man-hours were expended in writing and editing "The Future of SBA" booklet. The cost of writing, editing and printing "The Future of SBA" booklet was approximately $4,000.

QUESTION 17(c): Who are the intended beneficiaries of this informational packet, and to whom has the packet already been distributed?

ANSWER 17(c): The informational packet was given to Regional Administrators for reference material. No further distribution was planned or suggested.

QUESTION 17(d): How many copies of the flyer "The Future of SBA" have been printed? Who are its recipients and beneficiaries?

ANSWER 17(d): Approximately 120,000 copies of "The Future of SBA" were printed. One thousand copies of the booklet were sent to SBA's regional and district offices. Branch offices and post of duty offices each received 500 copies. The booklet was made available to persons attending a limited number of state White House Conferences on Small Business.

QUESTION 17(e): With regard to the flyer "The Future of SBA", please explain the factual basis for the following quote: "In Fiscal 1985, for example, lending by relatively small banks to small businesses increased by 8.6 percent, while lending by large banks to large businesses increased only 0.8 percent."

ANSWER 17(e): The quotation is based on information contained in the draft "1986 President's Annual Report on Small Business". The material is included in a summary chapter of that report, prepared by SBA's Office of Advocacy which states:

"As one of the two most important sources of external financing to small businesses, commercial bank lending to small business--as measured by small banks' commercial and industrial loans (C&I)--kept pace with the rapid expansion in lending during 1984, but slowed slightly during the first nine months of 1985. Commercial and industrial loans by small banks--those with assets under $1.4 billion --increased 14.8 percent during 1984 and at 8.9-percent annual rate during the first nine months of 1985 (Tables 3.2, A3.11 and A3.12), while C&I loans to large businesses by large banks increased only 0.8 percent."

QUESTION 17(f): Have the packets been sent to any Regional Administrators, or District Directors? If so, to whom and where.

ANSWER 17(f): The informational packages were given to regional administrators, and some members of the Central Office Management team for reference material.

QUESTION 17(g): Who wrote the model suggested editorial and model letter to the editor responding to negative views? Have the models actually been used and signed by any SBA personnel?

ANSWER 17(g): The model editorial and model letter to the editor were written by Robert W. Dietsch, Director of News Services. To our knowledge, the models have not been used or signed by any SBA personnel.

QUESTION 17(h): Who are the personnel currently working at the Office of Public Communications and how long have they been associated with the Agency? Who coordinates efforts at the Office of Public Communications?

ANSWER 17(h): Richard Utley coordinates and directs the Office of Public Communications. A list of personnel working in that office is attached. Mr. Utley has been employed by the Agency since April 1984.

QUESTION 17(i): Who at SBA or elsewhere is responsible for the formulation of any public communications plan organizing the Office of Public Communications?

ANSWER 17(i): Richard Utley is responsible for formulation of public communications plans and organization of the Office of Public Communications. Mr. Utley reports to the Associate Deputy Administrator for Management and Administration.

QUESTION 17(j): Please explain your views on how 13 CFR s 105.513(A) affects the efforts of the Office of Public Communications in disseminating its public communications plan?

ANSWER 17(j): The Office of Public Communications fully adheres to rules and guidelines set forth in 13 CFR s 105.513(A). No employee in the Office of Public Communications uses authority or activity to "coerce or influence the political action of any person."

Questions and answers, Senator Boren to Mr. Heatherly

QUESTION — Did you follow our Committee's hearing on S. 408? Have you read our Committee's report to accompany S. 408? Do you know the outcome of the Senate's consideration of this bill?

ANSWER — Although I did not attend the hearings on S. 408, I have read the Committee Report (Senate Report 99-20) to accompany this bill and the text of the legislation as contained in Title XVIII of the Consolidated Omnibus Budget Reconciliation Act of 1985 (P.L. 99-272). The Senate passed S. 408 on July 16, 1985.

QUESTION — How much of SBA's funds appropriated for salaries and expenses have you spent thus far on travel or in efforts to sell this long discredited proposal to eliminate the SBA? How much do you anticipate spending this year on such travel?

ANSWER — Since becoming Acting Administrator, I have spent approximately $1,400 on travel. This primarily involved trips to visit two SBA Regional Offices and to attend the White House Conference on Small Business in Phoenix. The present travel budget for the Office of the Administrator provides approximately $25,000 for the balance of the fiscal year, which is approximately 3/8 of 1 % of the Agency's total travel budget.

QUESTION

What is your view of the various small business trade associations such as NFIB, SBU, the U.S. Chamber of Commerce, NSB, SBLC, NASBIC, etc? Why have these organizations argued strongly in favor of retaining the SBA?

ANSWER

I welcome the interest which trade associations take in small business issues and problems. The growing strength of such trade organizations reflects the growing importance of small businesses in our economic and national life. I intend to work with such trade organizations for the benefit of all American small business owners.

These organizations and I have a common goal: To retain SBA and its most effective programs and activities. I am convinced that, when the benefits of the Administration's SBA budget proposal are better understood and appreciated, many members in these small business trade organizations will endorse the President's program.

Until that time I will continue to meet with them and discuss in an open, candid manner our differences as well as our areas of agreement.

The CHAIRMAN. The committee will stand adjourned.
[Whereupon, at 1:06 p.m., the committee adjourned.]

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